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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA, New York, N.Y.

4 v. 16 CR 468 (GHW)

5 JAMES GRANT and JEREMY
6 REICHBERG,

7 Defendants.
-----x

8 November 19, 2018
9 9:04 a.m.

10 Before:

11 HON. GREGORY H. WOODS,

12 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN
16 United States Attorney for the
Southern District of New York
17 BY: JESSICA R. LONERGAN
KIMBERLY J. RAVENER
MARTIN BELL
18 Assistant United States Attorneys

19 HAFETZ & NECHELES, LLP
20 Attorneys for Defendant Reichberg
BY: SUSAN NECHELES

21 MERINGOLO & ASSOCIATES
22 Attorneys for Defendant Grant
BY: JOHN MERINGOLO
ANJELICA CAPPELLINO

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1 (Jury not present)

2 THE COURT: Good morning everyone. Thank you for
3 being here. There's some issues that I want to talk about this
4 morning before we get into the decision with respect to expert
5 testimony. Is there anything that the parties would like to
6 raise with the Court before we get started?

7 Counsel for the United States?

8 MR. BELL: No, your Honor.

9 THE COURT: Counsel for Mr. Reichberg?

10 MS. NECHELES: No, your Honor.

11 THE COURT: Thank you. Counsel for Mr. Grant?

12 MR. MERINGOLO: Just two matters. One is juror number
13 seven, I know your Honor has been giving her water through your
14 deputy while she falls asleep. She's been falling asleep
15 throughout the whole trial, but specifically through the
16 cross-examination and the direct of the government witnesses.
17 I know the trial is extremely boring for most of us, but I
18 think she's falling asleep and I would like to keep an eye on
19 her.

20 THE COURT: Thank you. I will keep an eye on her. I
21 have noted her closing her eyes, and as you noted, I have been
22 asking Mr. Daniels to give her water or something when I have
23 seen that. I am not totally sure that she's falling asleep as
24 opposed to being a person that sits around with her eyes
25 closed. I haven't yet figured that out.

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1 When Mr. Daniels has gone over, she has responded
2 immediately. I have jurors that you had to poke in order to
3 wake them up. She's not there. So I'm not completely sure
4 that she's sleeping as opposed to being a person that closes
5 her eyes, but I will keep an eye on her.

6 MR. MERINGOLO: The next thing, Mr. Villanueva and
7 Mr. Ochetal have testified about these fingerprints coming back
8 in a month. We have been requesting the files found in
9 Villanueva's locker. I got -- someone dropped this off in my
10 mailbox, and it's one of the files, and the fingerprints have
11 come back in four days on this particular file that was not
12 turned to over, which I would think would be Brady,
13 exculpatory, Giglio; and maybe it's not the same thing or
14 somebody is trying to fool us, but this is one of the file
15 names that were given the other day, but we never received
16 these files.

17 And maybe the prosecutors weren't on the sister case
18 with the licensing division, but even if they weren't on the
19 sister case with the licensing division, that's no excuse not
20 to turn over these particular files where fingerprints are
21 coming back in four days after we're testimony that they're two
22 weeks, it's slow. And this particular file, your Honor, the
23 individual went in the same day as Mr. Reichberg, the same day,
24 and his fingerprints came back four days later.

25 THE COURT: Thank you. Can I ask, you said the file

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1 was dropped off in your mailbox, who dropped it off?

2 MR. MERINGOLO: I have no idea. I have no idea. I
3 know there's Bates stamps on it. It looks like it's from the
4 other case. I live in a private home in Dumbo. You could put
5 anything in my mailbox. Somebody may have read the transcript.

6 THE COURT: It was dropped off at your home?

7 MR. MERINGOLO: At the home, not even at the office.

8 THE COURT: Have you shown the documents --

9 MR. MERINGOLO: I just was looking at it this morning.
10 I can show this, and I hope this wasn't one of the ones that
11 were in there.

12 THE COURT: Could you, please -- it would be helpful
13 for me to have a copy.

14 MR. MERINGOLO: I have a copy for you.

15 I mean four days back after all this testimony is a
16 little bizarre.

17 MS. RAVENER: Your Honor, if we could address this
18 briefly.

19 THE COURT: Please.

20 MS. RAVENER: First of all, I don't think it's
21 inconsistent with the testimony of the witnesses. My
22 recollection of the testimony -- and of course defense counsel
23 is welcome to inquire into this -- is during the time that
24 Mr. --

25 THE COURT: I'm happy to hear about the testimony but

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I would like to focus on the underlying question, which is where did this document come from, was it in the government's possession, if so, was it something that would have or should have been turned over to the defense here? It appears that some helpful citizen has provided it to Mr. Meringolo. So I would like to focus on that question first.

MS. RAVENER: Your Honor, this is the first we're hearing about this document, so we have to check our records and get back to the Court in order to be entirely accurate.

I can tell you that the defense did raise a request for the names and files of the reference found in Mr. Villanueva's locker, which, by the way, as the evidence has shown, was found in a search approximately a year and a half to two years after Mr. Reichberg's license application.

THE COURT: And we did make as much of that available to them immediately upon receiving that request. We gave them a list of the names, we gave them a list of every file we could immediately locate that night. So I don't know whether this was included among those documents, we have to check our records, but if you can give us a moment we'll do our best to get back to you, your Honor, about that.

We have no problem continuing to provide anything that the defense seeks, within reason, that we could reasonably locate that is in our possession to the extent they make a showing that it may be useful to their defense and qualify

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1 under the rules.

2 MS. NECHELES: Your Honor, this is particularly
3 harmful because when the government says we can use it, I don't
4 know how we can use it now. We don't have Mr. Villanueva on
5 the stand anymore.

6 So if it's true that -- we did ask for these files, we
7 did ask for the list because it was revealed -- we realized
8 that there was something that had been there that hadn't been
9 turned over. It should have been turned over before, and
10 particularly if, as Mr. Meringolo -- I haven't even seen these
11 files, but if it only took that long for the fingerprints to
12 come back -- the government has repeatedly elicited from all
13 the witnesses that the reason it took so long is because there
14 was something wrong with fingerprints at this time, getting
15 them, and that's why it was so long for Mr. Reichberg, they
16 wasn't delaying it or stalling it, they were pushing it through
17 as quickly as possible. This is exculpatory evidence.

18 MS. RAVENER: Your Honor, if I could clarify one
19 point?

20 THE COURT: Please.

21 MS. RAVENER: We checked our records, and based on our
22 review right now we do not believe this record was part of the
23 records found in Mr. Villanueva's locker. It does appear to be
24 some sort of record from the license division. I can't right
25 now validate that it came from the government or its source, we

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1 have to investigate that further. As you know, there have been
2 many cases that came out of the investigation at the license
3 division that are wholly unrelated to this matter, but it was
4 not one of the records found in Mr. Villanueva's locker based
5 on our review.

6 THE COURT: Thank you. What's the Bates stamp
7 reference at the bottom? The document which has been handed to
8 me, which I will just mark as Court Exhibit A for reference
9 purposes, has a Bates stamp page number at the bottom of it
10 that reads and confidential 022359, and looks as though it's
11 sequential pages.

12 MS. RAVENER: Your Honor, frankly we don't know, we
13 have to check. It's possible that it was produced by the
14 government in connection with the John Chambers case.

15 THE COURT: Is this the government's formatting for
16 your Bates stamps?

17 MS. RAVENER: Not necessarily, your Honor, but it may
18 be. We don't always use one consistent prefix. So frankly, we
19 would have to review this with the other teams who handled
20 those cases and see if we can validate the document. At this
21 time, again, I think to the extent that the defense wants to
22 inquire of the witness about the speed of fingerprints or
23 anything along those lines during this time frame, I think
24 that's all fair game, but I don't think that there's anything
25 about this that is necessarily specifically tied to this matter

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1 or the testimony that we have heard so far.

2 THE COURT: Thank you. Someone out in the public
3 thinks that it is and took the initiative to send it to the
4 defense. I don't know what drove this, but presumably someone
5 unknown to the defendants heard the testimony or was aware of
6 what was happening in this case and thought that this record
7 would be helpful for the defense. I'm going to ask the
8 government to please find out where or whether this is a
9 document that was in the government's possession, and if you
10 can inquire whether this Bates stamp number is something that
11 the government produced. I will ask you to fill me in on that,
12 if you can today, so that we can move forward with this.

13 Thank you very much, Mr. Meringolo, for drawing this
14 to my attention.

15 MR. MERINGOLO: You're welcome.

16 THE COURT: It's an unusual thing, to say the least.

17 We'll mark this as Court Exhibit A and Mr. Daniels
18 will keep a copy of it.

19 Counsel, I think that I told the jury that we would
20 try to start at 9:15 this morning. The one issue that I think
21 that we need to capture this morning and then I can give the
22 rationale for my position with respect to the expert
23 disclosures data point, but I will do it today, is the
24 instructions with respect to the Title III recordings.

25 We have one objection to a component of that by

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1 Ms. Necheles which sparked a conversation what "for the truth
2 of the matter" means in the context of the hearsay rule. Have
3 the parties had the opportunity to look at that issue further,
4 particularly United States, does it remain your view that in
5 this context using the "It is raining outside" statement by
6 someone else to show that someone else's statement that it is
7 not raining outside is not true or to bolster the statement by
8 someone else who said that it is raining outside is not being
9 used for the truth of the matter?

10 MS. LONERGAN: Your Honor, so I will answer the
11 Court's question, but I think that the simpler answer is I
12 think that the instruction as it is is fine. We may ask you to
13 look at one word. The larger hearsay issue, which is not -- we
14 don't have to address at this moment, we may want to do
15 additional briefing later, but I think that that would more be
16 before closing arguments in terms of discussion of how these
17 statements in the calls that I think we are all agreeing don't
18 come in for the truth, how, if at all, we can use them in
19 closing. But I don't think it actually impacts the language of
20 the Court's proposal, which we agree with, and that we think
21 this language is fine in terms of giving it now.

22 THE COURT: Thank you. Ms. Necheles suggested that we
23 take out from the second paragraph the clause whereas evidence
24 someone said "it was raining outside," because she thought it
25 was unduly confusing when used in that illustration.

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1 MS. LONERGAN: Your Honor, in the third paragraph?

2 THE COURT: Yes, if I said second I meant third.

3 MS. LONERGAN: Your Honor, I think that is a correct
4 statement of the law, that the fact that something is said is
5 not hearsay, and so we do think that it is appropriate.

6 And we don't think here that the Court's language
7 necessarily gets into how the parties can argue from the fact
8 that something is said, but I do think that the fact that
9 something is said is non-hearsay. And again, we think that we
10 can further brief this later, but there are two rules, so 801
11 talks about what things are non-hearsay, and then also 803(3)
12 is an exception for a present state of mind, also if we look at
13 the notes of decisions, also called someone's belief, and then
14 there's a hearsay exception for when someone has a present
15 state of -- essentially a present state of mind.

16 THE COURT: I do want to debate this.

17 MS. LONERGAN: I don't want to either.

18 THE COURT: No, I do want to debate it. I think it's
19 engaging and I'm interested in the topic, but let me draw your
20 attention to the last sentence of paragraph two where the basic
21 use of this evidence is described, that you can consider the
22 fact that a statement was made separate and apart from the
23 truth of the matter.

24 Ms. Necheles hasn't taken issue with that, simply the
25 use of this clause in the illustrative language in paragraph

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1 three.

2 MS. LONERGAN: Your Honor, I think that in paragraph
3 three what the Court says is you cannot consider the statement
4 for its truth. Your Honor, in fact, the Court in the third
5 paragraph I don't think gives an example of the last statement
6 of the second paragraph.

7 So the last statement of the second paragraph says:
8 In addition, you may consider the fact that the statements were
9 made separate and apart from the truth of the statements
10 themselves. And then I think that the examples in the third
11 paragraph really focus more on what it means. It says: The
12 example is, but you can use that statement to place other
13 statements by a defendant in context or to understand a
14 defendant's state of mind, or as evidence that someone said it
15 is raining outside.

16 So we do think that's actually an accurate statement
17 of the law that you can use these non -- it's a non-hearsay,
18 does not come in for the truth used to consider that someone in
19 fact said it. We think, again, that the further development of
20 exactly what -- how we argue that at closing is not something
21 that we need to take up the jury's time with this morning, that
22 this statement as the Court has set it forth is an accurate
23 statement of the law.

24 We don't think that it is confusing at this point to
25 the jury because it provides an explanation, and that this

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1 explanation of the law, which I think comes a lot from
2 essentially combining the government's and the defendant's
3 proposals with examples from the Court would suffice at this
4 moment, and that we could again not take up the jury's time
5 with essentially what follows from this instruction, but we do
6 believe that the instruction is an accurate statement of the
7 law.

8 THE COURT: Thank you. Is Mr. Ochetal ready to
9 proceed, just for my information?

10 MS. LONERGAN: Yes, I think the answer is yes.

11 THE COURT: Thank you.

12 Ms. Necheles?

13 MS. NECHELES: Your Honor, I don't think it's a
14 correct statement of law. I think your Honor is trying to give
15 examples of how you can use the statement separate and apart
16 from the truth of it, and you do give the two examples and the
17 standing alone.

18 But the fact that someone said something is not
19 significant, it's how can you use the fact that they said
20 something that you're trying to explain, and you give two
21 examples. You could say -- if the government is concerned that
22 it seems like you're limiting the way, you could say but for
23 example, you could use that statement to place other statements
24 by the defendant in context or to understand a defendant's
25 state of mind. But just the fact that someone said something

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1 is not evidence of anything, the question is how can you use
2 that statement.

3 THE COURT: Thank you. I appreciate the discussion on
4 this point and I think that we do need to examine it further.
5 There's clear law on this, I looked at the treatises, and I
6 think that it will inform how the parties view this, but I want
7 to give you the opportunity to explore it further.

8 I'm willing to and will propose now to adopt
9 Ms. Necheles' modification to that sentence by adding the "for
10 example," at the beginning of the illustration sentence. That
11 makes it clear that I'm not being preclusive. But I appreciate
12 the concern that Ms. Necheles is suggesting, namely that this
13 illustration of the concept embodied in the last sentence of
14 paragraph two may be unduly confusing in that I'm not
15 explaining to them how it is that they can use the evidence
16 that someone said it's raining outside as being something
17 separate and apart from speaking to the truth of that fact,
18 which I don't think we need to do for purposes of what is
19 really just supposed to be illustrations to help frame the more
20 important instructions in the first two paragraphs, which, as
21 counsel for the United States described earlier, is the
22 amalgamation of the proposals by the defense and the United
23 States.

24 MS. LONERGAN: Your Honor, may we propose what is
25 hopefully one simple word change as well?

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1 THE COURT: Please.

2 MS. LONERGAN: In the third paragraph after the
3 first -- the second M dash, the Court, it says -- and lists a
4 series of names says if one of those people say it is raining
5 outside, you can consider that evidence for its truth, that is,
6 that it was in fact raining at that time. And we would like to
7 change the second "that" to say that is whether it was in fact
8 raining at that time. Because we're not telling the jury what
9 to conclude, we're just telling them that they could consider
10 it in trying to determine whether it was raining.

11 THE COURT: Thank you. I think that's a good point.
12 Counsel for the defendants?

13 MS. NECHELES: No objection to that, your Honor.

14 MR. MERINGOLO: No objection.

15 THE COURT: Thank you. I will make that change.

16 Counsel, could you please alert me to when it is that
17 you want me to administer this? I will take your instructions
18 about your views about the appropriate timing. I don't
19 understand this is pertinent to Mr. Ochetal, but I might do it
20 right after his testimony. Is that appropriate?

21 MS. NECHELES: That's fine, your Honor. And I know
22 the government is planning on playing more tapes, so right
23 before they do it maybe you could say this applies to the prior
24 tapes and this tape as well.

25 THE COURT: That's fine. Counsel for the United

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1 States, is that acceptable to you?

2 MR. BELL: We're going to play some tapes after
3 Ochetal, so I think everybody is zooming in on the same place.

4 THE COURT: Good. Thank you very much.

5 MS. NECHELES: Your Honor, I ended the other day
6 arguing that I should be able to ask about handwriting, and I
7 just want to tell the Court that I was wrong in my argument,
8 that in fact the rule is a little different than I remembered
9 it. So I will withdraw that. You can argue it to the jury or
10 you could ask somebody if they recognize the handwriting, so I
11 withdraw that argument.

12 THE COURT: Thank you. Good. Anything else?

13 Ladies and gentlemen, I think that we are still
14 missing two of our jurors. Mr. Daniels is going to reach out
15 to one of them who we haven't heard from yet, the other I
16 understand is entering the building.

17 So let me take this time to try to begin with my view
18 regarding the expert testimony.

19 To the extent that I need to interrupt this in order
20 to have the trial begin, I will beg your indulgence. I do want
21 to start as soon as the entire jury is here.

22 I apologize again if this becomes disjointed because I
23 expect to end right after the jury has assembled so we can
24 begin promptly, which I am pleased to say we can do today.

25 With respect to the motion regarding the defense

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1 experts, I'm going to grant the government's request to exclude
2 expert testimony from the two proposed experts identified by
3 Mr. Grant.

4 Before I begin, let me first say, to be clear, that
5 these witnesses may have relevant factual testimony from their
6 personal experience that they could testify about here. I'm
7 reacting to the request that I qualify them as experts to
8 provide testimony on the topics identified.

9 I will provide a more substantive overview of the law
10 in a moment, but the Court's assignation of an "expert" label
11 to a witness invests them with a degree of authority and
12 expands the scope of their potential testimony. As a result,
13 there are a number of steps that must be followed to introduce
14 the testimony of an expert, both with respect to the contest of
15 the disclosure and with respect to the Court's evaluation of
16 the basis for that opinion testimony. Here, the disclosure
17 provided by Mr. Grant is tardy and inadequate, and because it
18 does not meet the necessary standards for the admission of this
19 testimony as expert testimony, I conclude that I should
20 preclude it.

21 As background, in a letter dated October 23, 2018,
22 counsel for Mr. Grant provided expert disclosures with respect
23 to two prospective expert witnesses. October 23, 2018 was
24 eight business days prior to the commitment of this trial,
25 which, as the parties are well aware, was scheduled to have

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1 begun in early October but for a health issue of counsel's. I
2 will describe that October 23 letter as the "defendant's
3 disclosure."

4 The defendant's disclosure is short, approximately one
5 full page of text. The two proposed experts are Mr. Thursland,
6 a police inspector, I believe, who also works as an adjunct
7 professor at John Jay College, and Rabbi Gluck, an activist and
8 community liaison based in Brooklyn who works as a liaison
9 between the New York Police Department and observant Jews in
10 that community.

11 The October 23 disclosure describes the witness's
12 proposed testimony in very broad terms. The description
13 provided is short enough to quote in full for each. As to
14 Mr. Thursland, the disclosure states that he will "testify as
15 to internal NYPD procedures regarding an officer's
16 discretionary practices. He will testify to procedures
17 regarding, among other things, giving out PBA cards, providing
18 police escorts, allowing access to parades and other free
19 events, as well as other community police practices." As to
20 Rabbi Gluck, the notice states that is expected to testify
21 about the relationship between the NYPD and the Jewish
22 community, including the day-to-day security-related religious
23 and cultural concerns that are specific to this particular
24 community." Defendant's disclosure. While Rule 16(b)(1)(C)
25 requires that notice provided pursuant to it include "the bases

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1 and reasons" for an expert's conclusions, the disclosure
2 provides no information regarding the witness's bases and
3 reasons for the anticipated testimony. It merely provides very
4 summary biographical information for each of the witnesses and
5 the summary of the testimony that I just quoted.

6 On November 1, 2018, just eight days after the date of
7 the letter, and only one business day before the trial, the
8 government filed a motion to exclude the expert testimony for a
9 variety of reasons. I raised the issue now almost two weeks
10 ago during the trial with the hope that, given the arguments
11 presented in the letter, the defendant might choose to
12 supplement his disclosures to satisfy the deficiencies
13 identified in the November 1 letter. I had hoped/anticipated
14 that, given that the government's letter identified clear
15 concerns with the adequacy of the disclosure, regarding the
16 completeness of the disclosure, regarding the scope of the
17 testimony, and that the letter pointed out that the defendant's
18 disclosure only attempted to satisfy two of the three
19 requirements of the relevant rule, that the defendant might
20 take the opportunity to supplement the disclosure to address
21 the identifying deficiencies.

22 Defendant Grant did not do so. Instead, on November
23 12 he filed a letter brief arguing why the notice as provided
24 was adequate and that the evidence is properly admissible. And
25 when I asked whether the defendant wanted to supplement the

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1 disclosure, counsel for Mr. Grant told me that no, instead they
2 wish to stand pat with the original disclosure. I'm ruling on
3 that as a result.

4 Applicable law. In the interest of time, I am not
5 going to restate all of the relevant applicable law here. The
6 government's articulation of the basic legal principles
7 applicable to the Court's analysis of this issue is capably set
8 forth on pages 7 and 8 of its November 1, 2018 letter. I adopt
9 that here. I would like to highlight some portions of that
10 discussion now and will amplify it briefly to help
11 contextualize my decision.

12 In general, a defendant must "give to the government a
13 written summary of any testimony that the defendant intends to
14 use under Rule 702, 703 or 705 of the Federal Rules of Evidence
15 as evidence at trial." Federal Rule of Criminal Procedure
16(b)(1)(C). "This summary must describe the witness's
17 opinions, the bases and reasons for those opinions, and the
18 witness's qualifications." Id. "The purpose of the expert
19 disclosure requirement is to 'minimize surprise that often
20 results from unexpected expert testimony, reduce the need for
21 continuances, and to provide the opponent with a fair
22 opportunity to test the merit of the expert's testimony through
23 focused cross-examination.' Indeed, 'with increased use of the
24 both scientific and non-scientific expert testimony, one of
25 counsel's most basic discovery needs is to learn that an expert

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1 is expected to testify.'" *United States v. Ulbricht*, 858 F.3d
2 71, 114 (2d Cir. 2017), cert denied, 138 S. Ct. 2708 (2018)
3 (quoting Federal Rule of Criminal Procedure 16, advisory
4 committee's note to 1993 amendment)(internal citations
5 omitted).

6 Federal Rule of Evidence 702, which governs the
7 admissibility of expert testimony, provides:

8 "A witness who is qualified as an expert by knowledge,
9 skill, experience, training, or education may testify in the
10 form of an opinion or otherwise if: (a) the expert's
11 scientific, technical, or other specialized knowledge will help
12 the trier of fact understand the evidence or to determine a
13 fact in issue; (b) the testimony is based on sufficient facts
14 or data; (c) the testimony is the product of reliable
15 principles and methods; and (d) the expert has reliably applied
16 the principles and methods to the facts of the case." Federal
17 Rule of Evidence 702.

18 The party that proffers the testimony bears the burden
19 of showing that it is admissible. See *Bourjaily v. United*
20 *States*, 483 U.S. 171, 172-73 (1987). In *Daubert v. Merrel Dow*
21 *Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the Supreme Court
22 explained that Rule 702 requires district courts to act as
23 gatekeepers by ensuring that expert scientific testimony or
24 other expert testimony "both rests on a reliable foundation and
25 is relevant to the task at hand." Id at 597. As such, the

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1 Court must make "a preliminary assessment of whether the
2 reasoning or methodology underlying the testimony is
3 scientifically valid and whether that reasoning or methodology
4 properly can be applied to the facts at issue." Id at 592-93.

5 In short, the Court must "make certain that an expert,
6 whether basing testimony upon professional studies or personal
7 experience, employs in the courtroom the same level of
8 intellectual rigor that characterizes the practice of an expert
9 in the relevant field." *Kumho Tire v. Carmichael*, 526 U.S.
10 137, 152 (1999). In *Kumho Tire*, the Supreme Court held that a
11 district court's gatekeeping function applies to all expert
12 testimony, whether based on scientific, technical, or other
13 specialized knowledge.

14 *Daubert* set forth a non-exclusive list of factors that
15 district courts can consider in gauging the reliability of
16 scientific testimony. "Whether some or all of these factors
17 apply in a particular case depends on the facts, the expert's
18 particular expertise, and the subject of his testimony." *In re*
19 *Fosamax Products Liability Litig.*, 645 F.Supp. 2d 164, 173
20 (S.D.N.Y. 2009) (citing *Kumho Tire*, 526 U.S. at 138).

21 Let me pause because the jury has arrived. I would
22 like to begin promptly. I have about three more pages to get
23 through here, but I can do that at a later stage.

24 Counsel, are we ready to proceed?

25 Could we please bring in Mr. Ochetal.

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1 MS. RAVENER: Yes, your Honor.

2 THE COURT: Thank you.

3 (Continued on next page)

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Ochetel - Cross

1 (Jury present)

2 THE COURT: First, ladies and gentlemen, thank you
3 very much for being back here after the weekend. I hope you
4 had a pleasant weekend. I'm going to ask that we begin again
5 with the testimony of Mr. Ochetel.

6 Counsel, are you proceed prepared to proceed?

7 MS. NECHELES: Yes, your Honor.

8 THE COURT: Mr. Ochetel, let me remind you that remain
9 under oath.

10 THE WITNESS: Understood, your Honor.

11 THE COURT: Thank you, please proceed.

12 MS. NECHELES: Thank you, your Honor.

13 RICHARD OCHELAL, (Continued)

14 having been previously sworn, testified as follows:

15 CROSS-EXAMINATION

16 BY MS. NECHELES:

17 Q. Good morning, Mr. Ochetel.

18 A. Good morning.

19 Q. Mr. Ochetel, I want to clarify one thing before we start.
20 One of the -- you've testified a lot about a business carry,
21 correct?

22 A. Yes.

23 Q. And you have said that that was the most strenuous type of
24 license to obtain, right?

25 A. Yes.

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Ochetal - Cross

1 Q. And there's also something called a special carry, right?

2 A. Yes.

3 Q. And a special carry is when you have a permit from out of
4 town and you bring it in town to get -- you come here to New
5 York City and you want to get a permit here, right?

6 A. Yes, from a county other than the New York City counties of
7 the five boroughs.

8 Q. If you have a permit from outside of New York and you come
9 here and you want to be able to carry a gun for business, you
10 have to establish everything that you would have to do for
11 business carry, right?

12 A. Somewhat. You would have to establish that you have a
13 business dealing within the five boroughs in conjunction with
14 your business dealing in the outside counties.

15 Q. So you would have to show the same special need that you
16 would have to show to get a business carry, right?

17 A. It would be a similar kind of need, yes.

18 Q. Well, you would have to show danger, the same type of
19 thing, right?

20 A. Sure.

21 Q. And you would have to have all of the same kind of
22 documents that you would need for a business carry, right?

23 A. The documents were a little different because you included
24 a county permit from the county you would initially got your
25 license from, and then you would have to show a business

IBJTGRA1

Ochetal - Cross

1 location in the five boroughs of New York City of the same type
2 of business and with the same element of danger.

3 Q. The same letter of the necessity you would need?

4 A. The letter of necessity is always included in any kind of
5 carry license.

6 Q. Same type of bank statements or tax returns or any of those
7 things that you would need for business carry you would need if
8 wanted a special carry for business here, right?

9 A. Yes, you would need bank statements from here as well, yes.

10 Q. So a special carry, if you want to get it for business, is
11 as difficult to get as a business carry, right?

12 A. In my opinion or?

13 I would say not so much.

14 Q. Why?

15 A. Because they already had a permit to carry a firearm, so
16 it's -- it comes back to firearm experience, prior
17 investigation must have and should have been conducted in that
18 county.

19 Q. But all the business things that you need to show that you
20 have a danger and a need for it here you need for a special
21 carry just like you need for a business carry, right?

22 A. You would need to show that.

23 Q. And those you often gave special carries, right?

24 A. I don't recall the rate as far as often with special
25 carries, but they definitely were issued.

IBJTGRA1

Ochetal - Cross

1 Q. And sir, you testified that -- before you left we were
2 talking about that Mr. Villanueva called you after you were
3 both visited by internal affairs, do you recall that?

4 A. We exchanged text messages right after we were both visited
5 by internal affairs.

6 Q. And he wanted to coordinate with you?

7 A. He never said coordinate, no.

8 Q. What did he say?

9 A. We exchanged text messages on that exact day. The text
10 messages were basically that I will see you upstairs, upstairs
11 meaning the area of police headquarters where you go to become
12 modified, and I believe I'm the one who might have said we're
13 in the same boat, and he agreed, meaning we're under
14 investigation. And I got a response of: All Paul Dean. And
15 that was that as far as those text messages I recall on that
16 date.

17 Q. So he said to you it was all Paul Dean, is that correct?

18 A. In that text he said all Paul, yes.

19 Q. And what did you understand that to mean?

20 A. At that point I paid it no mind. I knew I was being
21 modified, that's just what he told me.

22 Q. You came to understand that Mr. Villanueva was suggesting
23 you guys could blame everything on Paul Dean, right?

24 A. I never thought about blaming anything on anybody, that's
25 just what he said.

IBJTGRA1

Ochetal - Cross

1 Q. But you knew Mr. Villanueva was looking to blame on other
2 people, right?

3 MS. RAVENER: Objection.

4 THE COURT: Thank you. Can you please rephrase the
5 question?

6 Q. Well, you understood from what Mr. Villanueva told you that
7 he was looking to blame this on other people, right?

8 A. At the time I don't -- I don't remember at the time. Maybe
9 I thought he might be. I really don't -- I mean a lot was
10 going through my mind at the time. Maybe he was working that
11 angle, it's possible.

12 Q. Am I correct that you became nervous that he was looking to
13 blame things on you?

14 A. I have heard that he was look to blame things on me,
15 Lieutenant Dean was looking to blame things on me, so at that
16 point it was what it was. So that's why I didn't pay that as
17 much mind as maybe I might have or should have.

18 Q. And at some point he left you a voice message, am I
19 correct?

20 A. Yes.

21 Q. When was that?

22 A. The voice message might have been the day after or two days
23 after, I'm not sure, basically just it was: Hey, bro, I'm
24 worried about you, haven't heard from you, give me a call.

25 Q. Okay. And this was after you were modified or after you

IBJTGRA1

Ochetal - Cross

1 were arrested, after what?

2 A. This was after I was modified.

3 Q. And did you call him?

4 A. No.

5 Q. And at that time did you understand that he wanted to get
6 together to cook up a story together?

7 A. In honesty that thought crossed my mind, but I believe at
8 that point, under advice of counsel, I should not contact him.
9 But I believe that was probably an option that he was looking
10 to do. I don't know. He could legitimately have been worried
11 about me, maybe he thought something happened to me, I don't
12 know, but -- so my head was in a lot of different places at the
13 time.

14 Q. Did you bring that voice message to the government?

15 A. I believe I mentioned the voice message.

16 Q. And what happened with it, to that voice message?

17 A. I don't know.

18 Q. Now you testified that with respect to Mr. Reichberg's file
19 that it took a long time to get the fingerprints back, right?

20 A. It took some time, yeah.

21 Q. But am I correct that you also testified that on occasion
22 you didn't even require fingerprints, right?

23 A. I think those occasions were happening after that time
24 period.

25 Q. And that was you had just -- you said you would do a

IBJTGRA1

Ochetal - Cross

1 summary background check and not even require fingerprints on
2 some occasion for people, right?

3 A. It was after that that we had access to a softer background
4 check, and if we weren't getting the fingerprints responses
5 back quick enough we could do a softer background check.

6 Q. What does that mean, softer background check?

7 A. A non- -- I believe it to be a non-federal background
8 check. It was kind of like a New York State background check
9 based on like Social Security number, date of birth, but not
10 based on the fingerprints.

11 Q. And that could be done immediately, right?

12 A. Yes.

13 Q. And am I correct that at times also you did a fingerprint
14 check that was done extremely rapidly, right, came back in a
15 day or two?

16 A. That would be possible as long as the response came back
17 from Albany and we could access it.

18 Q. But you did not do that for Mr. Reichberg, did you?

19 A. No, these particular methods, as far as I remember, were
20 not available as of yet.

21 Q. So it's your testimony, to be clear, that in 2014 you
22 couldn't get the fingerprints back that rapidly?

23 A. You could only get the fingerprints back as rapidly as
24 they were available in the system to pull them. The easiest
25 way for me to explain it is we send the fingerprints to Albany,

IBJTGRA1

Ochetal - Cross

1 if Albany is backlogged and they can't get to them -- they're
2 not in like our database to pull them out, but if Albany is
3 able to process it within days, week, whatever the time frame
4 would be, when they come back into our system we could pull
5 them out. So it was a two-part system. We depended on -- it
6 wasn't just the fact they were fingerprinted that day, we get
7 them back the next day; if Albany doesn't do their job of
8 processing the fingerprints, we can't get them back.

9 Q. But you were able to put pressure to get things back
10 quicker, right?

11 A. Not through Albany, no.

12 Q. But you could get -- you had a process where you could get
13 fingerprints back in a day or two, right?

14 A. If the fingerprints were back from Albany, we would get
15 them or we could say hey, can somebody pull them out of the
16 computer, but if Albany did not enter them, there was nothing
17 you could do about getting them back. So we were dependent on
18 that part of it before we could even think about doing it. It
19 was kind of a two-part system.

20 Q. They had to come from Albany, but you were able to call
21 Albany and push things along, right?

22 A. I don't believe I ever called Albany, no.

23 Q. Okay. Nobody told you just push this through without the
24 fingerprints, right?

25 A. I don't understand. Overall?

IBJTGRA1

Ochetal - Cross

1 Q. Yeah. Nobody told you to process Mr. Reichberg's
2 application -- just give him an application without the
3 fingerprints, right coming back?

4 A. No, nobody told me to put it through without fingerprints.

5 Q. Now the day that -- withdrawn.

6 With respect to Mr. Rechnitz's application, he did not
7 have all the paperwork he needed, even when he came in in
8 November and submitted an application, right?

9 A. On the date he submitted his application I wasn't there,
10 but afterwards I did have his file on my desk and I do not
11 remember all the paperwork being there.

12 Q. And unlike Mr. Reichberg, Mr. Rechnitz never sent in any
13 more paperwork that was required, right?

14 A. I don't believe he ever sent anything in, no.

15 Q. And he did not get a gun license, right?

16 A. No, he never did.

17 Q. Now with respect to Mr. Reichberg's file, you testified
18 that at some point Mr. Endall told you to wrap it up and that's
19 why you closed the file, right?

20 A. Yes.

21 Q. But aren't I correct that you previously told the
22 government that you closed this file up or you went forward and
23 issued the license on your own?

24 A. No, I would not issue it unless somebody of a higher rank
25 than me told me to do so.

IBJTGRA1

Ochetal - Cross

1 Q. Do you recall telling the government that you knew that you
2 should have required more paperwork but you didn't do so
3 because of Jimmy Grant's relationship?

4 Do you recall saying that to the government?

5 A. I did not require -- rather I did not completely review it
6 because of Jimmy Grant's relationship, but that was in
7 conjunction with the instruction from Inspector Endall stating
8 it was relative to Jimmy Grant's guy.

9 Q. But at the time you told this to the government, you told
10 them that you probably should have required more paperwork but
11 you didn't require it because of Jimmy Grant, and that
12 essentially that it was your decision. Do you recall telling
13 that?

14 A. Well, I could have required more documentation, but I chose
15 not to knowing the outcome.

16 Q. And at the time that you told this to the government, when
17 you said that you did it because of Jimmy Grant, you didn't say
18 it was Endall who told you to do that, right?

19 MS. RAVENER: Objection, asked and answered.

20 THE COURT: Thank you. You can answer the question.

21 A. I believe, to the best I can remember, I was told by
22 Inspector Endall to close this case out, Jimmy Grant's guy.
23 I'm not saying Jimmy Grant told me to do it, Inspector Endall
24 told me to close it out, and that's what I did.

25 (Continued on next page)

IBJKGRA2

Ochetal - Cross

1 BY MS. NECHELES:

2 Q. Well, do you recall telling the government on 4/25/18 that
3 after Mr. Reichberg was fingerprinted, that's when Jimmy Grant
4 was promoted, and that no one ever said to you to finalize it,
5 you said basically -- or, I'm sorry, withdrawn -- that that's
6 when Jimmy Grant's promotion happened?

7 MS. RAVENER: Objection, your Honor; compound, vague.

8 THE COURT: Please rephrase.

9 MS. NECHELES: Withdrawn.

10 Q. Do you recall telling the government that it was around the
11 time that Mr. Reichberg was fingerprinted, that Jimmy Grant was
12 promoted?

13 A. Around the time Mr. Reichberg was fingerprinted was around
14 the time that Jimmy Grant got promoted? To me, that seems
15 about right, as I remember.

16 Q. Weren't you saying that was why you wanted to give -- you
17 pushed this through?

18 MS. RAVENER: Objection; asked and answered,
19 argumentative.

20 THE COURT: Thank you.

21 Counsel, can you rephrase, please?

22 MS. NECHELES: Okay.

23 Q. Weren't you telling the government that the reason that you
24 went forward on this was because you liked Jimmy Grant and you
25 knew he had been promoted?

IBJKGRA2

Ochetal - Cross

1 MS. RAVENER: Objection; same grounds.

2 THE COURT: Thank you.

3 You can answer the question.

4 THE WITNESS: Can you just repeat that?

5 BY MS. NECHELES:

6 Q. Well, sir, weren't you telling the government that the
7 reason that you decided to give the license and not keep
8 looking for further paperwork on Jeremy Reichberg's application
9 was because you knew Jimmy Grant had been promoted and you
10 liked Jimmy Grant?

11 A. The promotion had nothing to do with that. I did not
12 dislike Jimmy Grant, I had nothing against him, but he was a
13 high-ranking member. I had nothing negative to say about him.
14 That had nothing to do with it. As far as approving it, I was
15 just, again, told on a certain day came about, that this is
16 Jimmy Grant's guy, wrap it up, and that's what I did. It
17 didn't come to me, oh, that this guy got Jimmy Grant promoted
18 and I liked Jimmy Grant, that's why I did it. That wasn't why
19 I did it. I just did it because Inspector Endall said it was
20 Jimmy Grant's guy. Not that it's Jimmy Grant's guy who got him
21 promoted to do it, it was just that it was Jimmy Grant's guy,
22 and I didn't weigh into his promotion or it didn't have
23 anything to do with how I felt about Jimmy Grant. I didn't
24 have anything to or against him. It was just that's what
25 happened that day.

IBJKGRA2

Ochetal - Cross

1 Q. Okay. But, sir, am I correct that you have met with the
2 government about 12 times to prepare for your testimony here?

3 A. I have no idea how many times, but definitely several
4 times, sure.

5 Q. Do you recall that it wasn't until -- all these events
6 happened in 2014, the events with respect to Mr. Reichberg
7 getting his gun license, right?

8 A. Yes.

9 Q. Do you recall telling the government in May of 2018 that
10 it's just now, thinking it over, that you were pretty sure
11 Endall said to wrap up Reichberg's application?

12 A. Yes, I believe that's what I said. I was always kind of
13 not sure of who made the call as far as wrapping it up, because
14 there was the aspect of Sergeant Villanueva saying, hey, Jimmy
15 Grant's guy is coming in to take care of him. So it was hard
16 to determine for a while, I guess, who really said to wrap it
17 up. And then I just needed to really think about who said to
18 wrap it up, whether it was one person or another that gave me
19 the instruction.

20 Q. So am I correct that in April, you told the government that
21 you knew that you should have required more paperwork, but you
22 didn't require more because of Jimmy Grant's relationship,
23 right?

24 A. Yes.

25 Q. And in May of 2018, you said, well, actually, thinking it

IBJKGRA2

Ochetal - Cross

1 over, I'm pretty sure now that it was Endall, Endall said to me
2 wrap it up, right?

3 MS. RAVENER: Objection.

4 THE COURT: Thank you.

5 Sustained.

6 BY MS. NECHELES:

7 Q. Well, am I correct that a month later, you then said to the
8 government, thinking it over, I'm pretty sure that Endall said
9 to wrap up Jeremy Reichberg's application?

10 A. For me, it was just a matter of determining -- I knew who
11 the relationship was with. It was just a matter of determining
12 what supervisor said to me to wrap it up.

13 Q. So, to be clear, four years after the event, after
14 thinking, and thinking, and thinking about it, that's when you
15 said, well, thinking it over, I'm pretty sure this is what
16 happened?

17 MS. RAVENER: Objection, your Honor.

18 THE COURT: Thank you.

19 Sustained.

20 Q. Well, sir, is that what happened when you spoke to the
21 government, that four years after the event, you said, well,
22 I'm pretty sure now, thinking back, that it was -- Endall said
23 this to me, and that's why I wrapped this up?

24 MS. RAVENER: Objection.

25 THE COURT: Thank you.

IBJKGRA2

Ochetal - Cross

1 Sustained.

2 BY MS. NECHELES:

3 Q. Well, sir, four years after the event, you said to the
4 government, pretty sure that Endall said to wrap up Jeremy
5 Reichberg's application, right?

6 MS. RAVENER: Objection.

7 THE COURT: You can answer the question.

8 THE WITNESS: Can you repeat that, please?

9 Q. Well, four years after the events in question, and after
10 meeting the government numerous times, you said to the
11 government, well, I'm pretty sure that Endall said wrap up
12 Jeremy Reichberg's application, right?

13 A. Yes. Like I said, it just -- it was a matter of who told
14 me to wrap it up. And for a while, it was hard to be sure who
15 it would have been because there were two people involved in
16 this case.

17 Q. And, sir, is it that your memory got better?

18 MS. RAVENER: Objection.

19 THE COURT: Thank you.

20 Sustained.

21 Q. Well, as you got closer to trial, then you remembered who
22 did this?

23 MS. RAVENER: Objection.

24 THE COURT: Thank you.

25 Sustained.

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Ochetal - Cross

1 BY MS. NECHELES:

2 Q. And thereafter, am I correct that in a later meeting with
3 the government, on -- oh, in the same meeting, you said for the
4 first time, I'm pretty sure Endall said to give him a full
5 permit?

6 A. I don't know the first time it was that I said that, but
7 that's what was said.

8 Q. And that's what you said -- you were getting ready to
9 testify at trial, right?

10 MS. RAVENER: Objection, your Honor.

11 THE COURT: Thank you.

12 You can answer the question.

13 THE WITNESS: I mean, there's no denying I was getting
14 ready to testify for trial.

15 Q. And that's when you made these statements, right?

16 MS. RAVENER: Objection.

17 THE COURT: Thank you.

18 You can answer the question.

19 THE WITNESS: Just ideas, recollections, memories, a
20 lot had gone on, so a lot is not as easy to recall as people
21 may think. And I didn't want to say Dave told me to wrap it
22 up, or Endall told me to wrap it up, until I was more certain
23 as who it was rather than just throwing a name out there.

24 MS. NECHELES: I have no further questions.

25 THE COURT: Thank you, counsel.

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Ochetal - Cross

1 Counsel for Mr. Grant?

2 CROSS-EXAMINATION

3 BY MR. MERINGOLO:

4 Q. Good morning, sir.

5 A. Good morning, sir.

6 Q. You did not plead to honest services fraud, correct?

7 A. Excuse me. Could you repeat?

8 Q. You pled only to bribery, right?

9 A. Bribery and conspiracy to commit bribery.

10 Q. You didn't plead guilty to honest services fraud, correct?

11 A. Yes.

12 Q. Now, you said you worked in the licensing division from
13 2009?

14 A. Yes.

15 Q. When did you meet Mr. Villanueva? In 2009?

16 A. I'm sure I met him in 2009.

17 Q. In 2009, were you aware he was involved in a bribery
18 scheme?

19 A. No.

20 Q. You worked in the licensing division from 2009 to
21 approximately 2016, right?

22 A. Yes.

23 Q. When was the first time you became aware that
24 Mr. Villanueva was involved in a bribery scheme?

25 A. I mean, it's hard to recall the first time. I mean, it

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Ochetal - Cross

1 wasn't years or years after that.

2 Q. Let me try: You started in this bribery scheme
3 approximately in 2014, right?

4 A. Yes.

5 Q. Were you aware prior to 2014 that Mr. Villanueva was
6 involved in a bribery scheme?

7 A. No.

8 Q. So you first became aware that Mr. Villanueva was involved
9 in a bribery scheme when you entered into the scheme, correct?

10 A. Yeah, that would sound right.

11 Q. At one point between 2009 and 2014, did you become friendly
12 with Mr. Villanueva?

13 A. Yes.

14 Q. You did.

15 Do you know when approximately? What year?

16 A. Maybe 2013.

17 Q. Now, were you best man at his wedding?

18 A. Yes.

19 Q. And when was his wedding?

20 A. I believe it was the end of two -- or close to the end of
21 2015.

22 Q. So let me clear this up: You weren't aware that he was
23 involved in a bribery scheme prior to 2014, and you were
24 friends during that period of time, correct?

25 MS. RAVENER: Objection.

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Ochetal - Cross

1 THE COURT: Thank you.

2 You can answer the question.

3 THE WITNESS: I'm not the best with dates and times.

4 I've said that to the government before. Yes, I was friends
5 with David Villanueva. When I first started becoming friends
6 with David Villanueva, I did not have any personal knowledge of
7 any type of bribery scheme at that point.

8 BY MR. MERINGOLO:

9 Q. But then you became really good friends, and you were his
10 best man at his wedding, right?

11 A. Later on, yes.

12 Q. When you started in the bribery scheme, do you recall
13 processing applications from Mr. Petroske? Petroske, I
14 believe.

15 A. I'm not sure the name rings a bell. Maybe.

16 Q. Ben Petroske doesn't ring a bell?

17 A. Yes. It rings a bell, yes.

18 Q. Was he an expeditor?

19 A. My recollection of Ben Petroske was -- I believe he retired
20 from the license division.

21 Q. And then he was doing expediting thereafter?

22 A. I guess, looking back, you would consider it expediting.

23 Q. And what is expediting, sir?

24 A. I would say moving something at a faster pace than normal.

25 Q. To your knowledge, individuals would hire expeditors to get

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Ochetal - Cross

1 their gun license faster, correct?

2 A. Yes.

3 Q. But if someone didn't want to hire an expeditor, could they
4 go online and review what would be required to get a gun
5 license?

6 A. I believe they could.

7 Q. Do you remember -- I'm changing the topic now, just to let
8 you know.

9 Do you remember processing a license for a Peter
10 Castellano?

11 A. Offhand, I don't remember the name.

12 Q. Do you recall processing a license for someone who owned or
13 managed Western Beef, which was Peter Castellano? Only if you
14 remember.

15 MS. RAVENER: Objection to the form, your Honor.

16 THE COURT: Thank you.

17 You can answer the question.

18 THE WITNESS: I remember an applicant that was
19 associated with Western Beef.

20 BY MR. MERINGOLO:

21 Q. Do you know if that was Mr. Villanueva's friend or part of
22 the conspiracy?

23 A. I don't know if he was part of any conspiracy, but the only
24 reason I know of an applicant working at Western Beef was
25 through David Villanueva.

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Ochetal - Cross

1 Q. Okay. Thank you very much for that.

2 Do you recall a gentleman by the name of Sal
3 Mistretta, who ran the licensing division in Nassau County?

4 A. Yes.

5 Q. Would you process licenses as a courtesy for Mr. Mistretta?

6 A. I'm sure it's possible that I did.

7 Q. He wasn't involved in the conspiracy with you, correct?

8 A. Not to my knowledge.

9 Q. But are you aware he was very friendly with Mr. Villanueva?

10 A. I knew they had a friendly relationship. Don't know to
11 what extent, but, yes.

12 Q. I'm just going to move on to a different topic, sir.

13 Now, I believe that you helped process gun licenses
14 for individuals from the internal affairs office.

15 Do you recall telling the government that?

16 A. It's definitely possible. I've processed applications from
17 various people, entities in the police department.

18 Q. Okay. But specifically, do you remember processing a --
19 and you did nothing wrong, but do you remember processing an
20 internal affairs -- for an internal affairs deputy inspector?

21 MS. RAVENER: Objection to the characterization.

22 THE COURT: Thank you.

23 Can I ask you to rephrase the question?

24 BY MR. MERINGOLO:

25 Q. Do you recall processing, for a deputy inspector from

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Ochetal - Cross

1 internal affairs, a license for one of his friends?

2 A. Right now, I don't recall. It's possible. I just don't
3 recall.

4 Q. Okay. That's fine.

5 Do you recall telling the government that you did
6 favors for the internal affairs through Michael Endall?

7 A. I know I did favors for Michael Endall. In regards to
8 internal affairs? Again, it's possible. It's just a lot is...

9 Q. I understand.

10 I'm going to show you something that may refresh your
11 recollection.

12 MR. MERINGOLO: Your Honor, may I approach?

13 THE COURT: Please do.

14 BY MR. MERINGOLO:

15 Q. It's 3519-27, page 10. Page 10, third line down. You can
16 read the whole thing, sir, but I just want you to read this one
17 line I pointed you to to see if it refreshes your recollection.
18 If it does, it does; if it doesn't, it doesn't. Take your
19 time.

20 MS. RAVENER: One moment?

21 Can I see that again?

22 (Pause)

23 MS. RAVENER: Your Honor --

24 MR. MERINGOLO: Hold on.

25 MS. RAVENER: -- one moment? One moment, your Honor?

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Ochetel - Cross

1 THE COURT: Please take your time.

2 MR. MERINGOLO: All right. I'll withdraw that.

3 THE COURT: Thank you.

4 BY MR. MERINGOLO:

5 Q. But you refer giving the red carpet treatment to people
6 from internal affairs?

7 A. I did give red carpet treatment to many individuals. Is it
8 possible they were from internal affairs? Yes, but I don't...

9 Q. Thank you. Any high-ranking police officer that referred
10 someone to the licensing division, to your knowledge, that you
11 handled, you would give the red carpet treatment to, correct?

12 A. Usually, if that was the case, I was instructed to do so,
13 and I chose to do so.

14 Q. But that was common practice for high-ranking officials who
15 recommended people, correct?

16 MS. RAVENER: Objection.

17 THE COURT: Thank you.

18 You can answer the question.

19 THE WITNESS: It -- yes, it would happen.

20 BY MR. MERINGOLO:

21 Q. Just moving it along, Mr. Ochetel.

22 Do you believe Mr. Villanueva manipulated you into
23 this bribery scheme?

24 MS. RAVENER: Objection.

25 THE COURT: Thank you.

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Ochetal - Cross

1 Can you please rephrase the question, counsel?

2 BY MR. MERINGOLO:

3 Q. Do you feel that Mr. Villanueva is a truthful person?

4 MS. RAVENER: Objection.

5 THE COURT: Thank you.

6 Sustained.

7 Q. Do you believe you were manipulated into this bribery
8 scheme? Do you believe?

9 MS. RAVENER: Objection. Objection.

10 THE COURT: Thank you.

11 Sustained.

12 Q. Now, I want to talk to you about the gun application
13 itself, okay?

14 On each application, it refers to the penal law 400,
15 correct?

16 A. Yes, that sounds right.

17 Q. Isn't it true that you told the government that people
18 usually get their licenses within six months pursuant to the
19 penal law 400?

20 A. The way that works, if I remember correctly, according to
21 penal law 400, is that the six months is -- as an investigator,
22 you are supposed to act on a particular case in that six-month
23 period, providing that there's nothing holding you back as far
24 as the city is concerned, meaning you have conducted an
25 interview, receipt of the paperwork, the fingerprints, the

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Ochetal - Cross

1 mental health rec -- you have everything you need, the person
2 has done everything they could possibly do, that's when you
3 need to act on it within that time period. However, if you do
4 not have certain documentation, then it can go on as long as it
5 takes for the city to get what they need to make a decision.

6 Q. Well, maybe it's been a while, but do you recall telling
7 the government that penal law 400, a 400 permit, should be
8 within six months, whether it's approved or disapproved,
9 regardless of the permit?

10 MS. RAVENER: Objection.

11 THE COURT: Thank you.

12 You can answer the question.

13 THE WITNESS: If you have all that is necessary and
14 required, then you could, and you should, but if you do not,
15 then you are not to do that. In other words, if somebody
16 applied for a premise residence license where the guidelines
17 are a little less intense, so you don't need as many things,
18 you probably have all those things within three -- three
19 months, whatever time period it is, then you're supposed to act
20 on it because you have everything you need. So it's when you
21 don't have everything you need, it can take longer than the
22 penal law code about the six months.

23 So I don't know if that clears it.

24 Q. No, I'll try to do it right now.

25 But isn't it a fact that you have to, whether approve

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Ochetal - Cross

1 or disapprove, within six months pursuant to the penal law 400?

2 MS. RAVENER: Objection.

3 THE COURT: Thank you.

4 You can answer the question, if you can answer.

5 THE WITNESS: From my recollection, you cannot make
6 that decision if you don't have the documentation. So we would
7 be told, hey, reach out to this guy, put it back -- the burden
8 back on the applicant, hey, you're missing, I don't know, a
9 utility bill, I can't approve you till you have this. So if
10 you have all this, you're correct, that's what we should do.

11 Q. So if you have all the paperwork, and the fingerprints came
12 back, pursuant to penal law 400, you can get your permit within
13 six months?

14 MS. RAVENER: Objection.

15 THE COURT: Thank you.

16 Sustained.

17 BY MR. MERINGOLO:

18 Q. If you have all your paperwork, you can get -- as soon as
19 all your paperwork is done and the fingerprints come back, you
20 can get a lawful business carry license, right?

21 MS. RAVENER: Objection.

22 THE COURT: Thank you.

23 You can answer that question.

24 THE WITNESS: If within six months, you have all the
25 required paperwork, interviews conducted, background check

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Ochetal - Cross

1 checks out, you can get it within that time period if you have,
2 and if you qualify, for the particular type, whether it's carry
3 business. It could even go as down to a premise, because
4 sometimes you investigate a premise because they have a prior
5 arrest history or whatever, but based on information you are
6 given, because we require certain things for certain licenses,
7 if you get it all, and you believe they pass that
8 qualification, then that's when that comes into play.

9 BY MR. MERINGOLO:

10 Q. So you can get your permit within six months as long as all
11 the paperwork is done correctly, right?

12 A. And you qualify. It's not just a matter --

13 Q. Okay. If you qualify --

14 A. Yes.

15 Q. -- and have all the paperwork, you can get, according to
16 the penal law, your permit within six months?

17 MS. RAVENER: Objection.

18 THE COURT: Thank you.

19 Sustained.

20 Q. If you have all the paperwork and the fingerprints come
21 back correctly, you can get your license within six months,
22 correct?

23 MS. RAVENER: Objection; asked and answered.

24 THE COURT: Thank you.

25 You can answer the question.

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Ochetal - Cross

1 THE WITNESS: Fingerprints -- you still have to
2 qualify.

3 BY MR. MERINGOLO:

4 Q. If you qualify, you can get your permit within six months,
5 correct?

6 A. It's not impossible, no. If you qualify, you could, yes.

7 Q. Well, didn't you tell the government that it normally takes
8 six months to get -- normally about six months for a business
9 carry?

10 A. Yes.

11 Q. And six months, if you qualify, is not a year and a half,
12 right?

13 A. No.

14 MR. MERINGOLO: Just one moment, your Honor?

15 THE COURT: That's fine. Please take your time.

16 (Pause)

17 MR. MERINGOLO: Could we pull up Government Exhibit
18 732.

19 Q. Do you see that on your screen, Mr. Ochetal?

20 A. Yes.

21 Q. I'd like to show you the date when Mr. Reichberg bought his
22 gun that it says.

23 Now, what date does it say he purchased his firearm?

24 A. Purchase date is 10/10/2014.

25 Q. Do you know if that was a typo, sir?

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Ochetal - Cross

1 A. I don't.

2 Q. Are there other typos in this purchase order?

3 MS. RAVENER: Objection.

4 Q. Are there typos in ALPS usually?

5 MS. RAVENER: Objection.

6 THE COURT: Thank you.

7 Can I ask you to rephrase the question, please,
8 counsel?

9 BY MR. MERINGOLO:

10 Q. In your experience being in the licensing division, have
11 you encountered many typos in the ALPS process?

12 MS. RAVENER: Objection.

13 THE COURT: Thank you.

14 You can answer the question.

15 THE WITNESS: I assume there could be typos, yes.

16 Q. I'm going to pull up the first page and show you the
17 personal address. Do you see the zip code, sir?

18 A. Yes.

19 Q. And that would be a typo, correct?

20 MS. RAVENER: Objection.

21 THE COURT: Thank you.

22 Can I ask you to rephrase the question, please?

23 Q. Well, that zip code has nine numbers, right?

24 A. It has five.

25 Q. Well, what's -- after the numbers, it has 0000?

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Ochetal - Cross

1 A. You enter a five-digit zip code, as far as I remember.

2 Q. Does it usually have those four zeros thereafter?

3 MS. RAVENER: Objection, your Honor.

4 THE COURT: Thank you.

5 Sustained.

6 BY MR. MERINGOLO:

7 Q. Now, the personal address zip code, if everybody can look
8 at it, has the same zip code as the business address, correct?

9 A. Yes.

10 Q. Now, if you look at the personal address, the street and
11 the city, it says 56 Street, Brooklyn, right?

12 A. Yes.

13 Q. And if you look at the business address, it says 580
14 New York, correct?

15 A. Yep.

16 Q. So is it safe to say that there is a typo in the zip code,
17 sir?

18 A. It's either a typo or I am just typing what's on the
19 application.

20 Q. But we could agree the same zip code in Brooklyn is not the
21 same zip code in New York, correct?

22 A. Nope.

23 Q. Did you check any documents to see the accuracy of the date
24 of the purchase of the gun, sir?

25 A. Can you repeat that?

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Ochetal - Cross

1 Q. Did you check any documents to see the actual date of the
2 purchase of the gun? If you just recall, I showed you the
3 purchase of the gun was October 10th, 2014.

4 A. Yes.

5 Q. Now, in order to put that in there, did you check any
6 documents to see the actual date of the purchase of the gun?

7 A. Typically, what I think I would have, should have, done is,
8 based on a bill of sales, get the date on when the gun was
9 actually purchased.

10 Q. So before you testified here today, did you check any
11 documents? Did you go over any documents with the government?

12 A. I mean, I've seen these documents.

13 Q. Okay. Before you testified, correct?

14 A. Yes.

15 Q. Did the government show you the documents of when
16 Mr. Reichberg purchased his gun, what date he purchased his
17 gun?

18 A. The only documents I've seen are these. There are no other
19 documents as far as bill of sale.

20 MR. MERINGOLO: Your Honor, I believe there's a
21 stipulation that we have with respect to the credit cards of
22 Mr. Reichberg.

23 Pursuant to this stipulation, your Honor, I'd like to
24 offer the credit card. Do you want me to read the stipulation
25 at this point?

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Ochetal - Cross

1 MS. RAVENER: Your Honor, if we could just ask to see
2 the document counsel is referring to?

3 MR. MERINGOLO: Government Exhibit 1702.

4 MS. RAVENER: That's not what I mean, your Honor. If
5 I could have a moment to confer with counsel.

6 THE COURT: Thank you. Please take your time,
7 counsel.

8 MS. RAVENER: Thank you.

9 (Pause)

10 MR. MERINGOLO: Is it okay to read this?

11 THE COURT: Thank you.

12 MS. RAVENER: We have no problem with reading the
13 stipulation.

14 THE COURT: Thank you. Please proceed.

15 MR. MERINGOLO: "It is hereby stipulated and agreed to
16 by and between the United States of America, Geoffrey Berman,
17 United States Attorney for the Southern District of New York,
18 Martin Bell, Jessica Lonergan, Kimberly J. Ravener, Assistant
19 U.S. Attorneys, Jeremy Reichberg, Jeremiah Reichberg, Yermy
20 Reichberg, the defendant, by his attorney, Susan Necheles,
21 Esq., and James Grant, Jimmy Grant, the defendant, by his
22 attorneys, John Meringolo and Anjelica Cappellino that if
23 called to testify, custodian of records from the following
24 financial institutions would testify that they are similar with
25 the recordkeeping practices of their respective institutions:

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Ochetal - Cross

1 American Express, JP Morgan Chase, TD Bank, Citibank.

2 "Each of those custodians would further testify as to
3 the following government and defense exhibits associated with
4 each institution's collectively records. The exhibits consist
5 of true and correct copies of records regularly conducted
6 activity made at or near the time of the activity by or from
7 information transmitted by a person with knowledge of the
8 matters set forth herein: American Express, GX 201, 202, 213,
9 214, JR-1101, JR-1105, JPMC, JX 203 through 212, JR-1106
10 through JR-1109, and JR-1203; TD Bank, JX 215; and Citibank,
11 JR-1110, JR -- through JR-1115, and JR-1201.

12 "Each of the custodians would further testify as to
13 their respective records that those records were kept in the
14 course of a regularly conducted business activity and were
15 created as a regular practice of the business activity.

16 "It is further stipulated and agreed that the
17 Government Exhibits 201 through 215 and Defense Exhibits
18 JR-1101 through JR-1115, JR-1201, JR-1202 consist of records
19 that constitute business records pursuant to 803(b) of the
20 Federal Rules of Evidence."

21 MS. RAVENER: Your Honor, can we ask for a very short
22 sidebar about this?

23 THE COURT: Yes, please. Come on up.

24 (Continued on next page)

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Ochetal - Cross

1 (At the sidebar)

2 THE COURT: I'm sorry, counsel, please proceed.

3 MS. NECHELES: Judge, we have --

4 MS. RAVENER: That's not what we have, Susan.

5 Look, your Honor, if we may, our records reflect --

6 THE COURT: I'm sorry, can we first back up just for
7 context. There have been a couple of misreadings, small
8 misreadings.

9 MR. MERINGOLO: That's my fault. I can't control
10 that.

11 THE COURT: I think that's fine. So I'm not going to
12 say anything about it in front of the jury.

13 For context, can the parties tell me what document it
14 is that this is ultimately leading up to?

15 MS. NECHELES: Judge, this is an American Express
16 record which shows that the gun was bought on a later date. I
17 forgot to do this on my cross, which is why I've been asking
18 Mr. Meringolo to do this. The government elicited on direct
19 the date that it has on this application for the gun purchase,
20 making it look like he purchased the gun and was allowed to
21 purchase a gun before he even got his gun license. It's just
22 not right. We have the American Express record.

23 Now --

24 THE COURT: I'm sorry, what's the exhibit reference?

25 MS. NECHELES: So in my -- in what I have in my

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Ochetal - Cross

1 exhibits, the government had marked this particular American
2 Express record as 206-A. I'm now hearing from the government
3 that that was an earlier marking, but when we stipulated,
4 that's what I thought was the record.

5 MS. RAVENER: Your Honor, if we could be clear about
6 this. That is not what our records reflect. This document is
7 not part of the stipulation.

8 Now, the parties very well may be able to work this
9 out and enter into a new stipulation to permit the defense to
10 offer this document at an appropriate time, but we can't do
11 that on the fly here without having an opportunity to verify
12 the document.

13 Based on our records, this document is not part of the
14 stipulation. I don't think it's material to the testimony of
15 this witness regardless. The witness has already testified
16 that the figure may be a typographical error, he's not certain.
17 I don't think that we need to resolve this right this moment,
18 but, in any event, this document is not part of the existing
19 stipulation originally.

20 THE COURT: Thank you.

21 MS. NECHELES: Judge, the government exhibit, or the
22 stipulation, lists exhibits from one number to the next. This
23 was part of what we understood. So when the government says
24 they need to verify this document, this is a document they have
25 marked as an exhibit.

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Ochetal - Cross

1 THE COURT: Thank you. Understood.

2 MS. LONERGAN: Can I just bring this up. If you
3 remember, there was another issue that was very similar, and
4 defense counsel got up and made representations to the Court,
5 which later turned out to be untrue, about what the government
6 had provided to her at the time she signed the stipulations. I
7 just want to provide that as a context here, which is that I
8 think as that sequence of events made clear, we have been very
9 careful to make sure that when we provide stipulations, we
10 provide the correct underlying documents. It is true that we
11 have updated our exhibits, but we have made it very clear to
12 defense counsel when we are updating our exhibits.

13 Again, I don't think -- as Ms. Ravener said, I don't
14 think this is going to be an issue because to the extent that
15 there's a bank record, we're going to stipulate that it's
16 authentic. So that's not going to be an issue. We just --
17 it's not covered in the stipulation as the stipulation is
18 currently drafted.

19 THE COURT: That's fine. Thank you.

20 Counsel, if that's the case, I think that we can take
21 this up separately. As I understand it, this witness has never
22 seen this record, so the question is, I'll call it, one of
23 presentation; namely, whether you can make this dramatic claim
24 with this witness as opposed to later in argument.

25 MS. NECHELES: To show the witness, yes, that, in

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Ochetal - Cross

1 fact, this is an error. I mean, the government elicited it on
2 direct and made a big deal about how he bought the gun
3 improperly before he got the license, and it's just not true.

4 THE COURT: Thank you. Understood.

5 MS. LONERGAN: One moment, your Honor?

6 THE COURT: Please. Go ahead.

7 MS. NECHELES: I'm not saying that this was the
8 document. I'm saying that we understood it to be. It's very
9 confusing. The government does not give us copies with the
10 stipulation. I have ten stipulations sitting on my desk. We
11 give --

12 THE COURT: Counsel for the United States, do you have
13 an alternative proposal?

14 MS. LONERGAN: Your Honor, they can, without
15 describing the document, show it to the witness to refresh his
16 recollection and ask, is there anything about this document
17 that -- but I don't think it would refresh his recollection,
18 but I don't think it can come into evidence at this point
19 because there is no stipulation as to its authenticity.

20 THE COURT: Thank you.

21 In the absence of a stipulation, I think that we need
22 to move on. I understand that the government has offered to
23 work with the defense to craft a stipulation that would
24 encompass this document. So, really, this is a question of
25 timing and when it is that defense will have the opportunity to

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Ochetal - Cross

1 point out the inconsistency between this document and the
2 relevant record. That need not happen right with this witness,
3 and I'd like to keep moving.

4 MS. RAVENER: Thank you, your Honor.

5 THE COURT: Thank you.

6 (Continued on next page)

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Ochetel - Cross

1 (In open court)

2 THE COURT: Thank you, counsel.

3 MR. MERINGOLO: Not much longer with Mr. Ochetel.

4 THE COURT: That's fine. Take your time. You can
5 proceed.

6 BY MR. MERINGOLO:

7 Q. Mr. Ochetel, in your experience, how quickly have prints
8 come back for you during your tenure at the licensing division?

9 A. I'd say it varied. I was there for a while. I've seen
10 them come back, it took months and months. There was times
11 where it could have been four months we're waiting on prints,
12 and, at some point, they were coming back in, I don't know,
13 within weeks. I think it was just part of maybe a staffing
14 issue at DCJS, but it varied. There was a huge variation of
15 time frames.

16 Q. Right. Isn't it true that it could have come back within
17 days?

18 A. If DCJS got the prints back, and it processed them, it
19 could come back in several days.

20 Q. So it is possible that -- or it has happened that
21 fingerprints have come back in days, correct?

22 A. I would say within a week is not a stretch. After we had a
23 long process of them taking months, yeah, there was a time
24 where they were coming back, and getting them within a week
25 wouldn't be out of the realm. Or at least two weeks, for sure.

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Ochetal - Cross

1 Q. Okay. You recall the date that Mr. Reichberg went to see
2 you, correct?

3 A. Yes.

4 Q. To do his fingerprints, right?

5 A. Yes.

6 Q. You recall other people coming that day, other than -- were
7 other people that day?

8 A. Yes, there were other applicants.

9 Q. Now, do you recall another applicant that came that day
10 that got his fingerprints back within four days? Do you recall
11 that?

12 A. No.

13 Q. Okay. You're very familiar with all this -- with this
14 process, right?

15 A. I would say so.

16 Q. So would I.

17 MR. MERINGOLO: Judge, let me see if I can refresh his
18 recollection --

19 THE COURT: Thank you. Please proceed.

20 MR. MERINGOLO: -- with this document.

21 BY MR. MERINGOLO:

22 Q. Let me see if this refreshes your recollection regarding
23 what I just asked you. You can read the whole thing, but I'm
24 referring you to that point.

25 THE COURT: Thank you.

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Ochetal - Cross

1 You're referring to Court Exhibit A?

2 MS. RAVENER: And, your Honor, I would just like the
3 witness to be given the opportunity to review the whole
4 document.

5 MR. MERINGOLO: He can read the whole thing.

6 THE COURT: Thank you.

7 MR. MERINGOLO: We'll mark it 1001, Judge.

8 (Pause)

9 THE WITNESS: Okay.

10 BY MR. MERINGOLO:

11 Q. Let me take it, and I will ask you a question.

12 Does that refresh your recollection, sir, regarding
13 those prints?

14 A. It doesn't refresh my recollection of the individual.

15 Q. But does that refresh your recollection that prints came
16 back within four days?

17 A. They could have. The only thing is, on some prints, which
18 it appeared that that one was --

19 Q. We can't discuss this because it's not in evidence. Sorry.

20 A. All right. All I'm trying to say is that what also could
21 happen to get prints back at a very fast pace is if somebody
22 applied for a limited carry license and already had a rifle or
23 shotgun permit or a premise residence license, the prints are
24 already in DCJS, they would automatically come back like the
25 next day. So that's also a possibility as far as the speeding

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Ochetal - Redirect

1 it along.

2 Q. Okay.

3 A. Not to say if we knew that, we might do that on our own.

4 If we knew somebody already had a permit, we knew we had the
5 prints right away, but that's one way of having the prints
6 readily accessible, if they had a prior license.

7 MR. MERINGOLO: Thank you for your testimony.

8 THE WITNESS: You're welcome.

9 MR. MERINGOLO: No further questions.

10 THE COURT: Thank you.

11 Counsel for the United States?

12 MS. RAVENER: Yes, your Honor, briefly.

13 THE COURT: Thank you.

14 Please take your time.

15 REDIRECT EXAMINATION

16 BY MS. RAVENER:

17 Q. Good morning, Mr. Ochetal.

18 A. Good morning.

19 Q. Mr. Ochetal, what do you need to do to get a 5K letter?

20 A. My understanding, to get a 5K letter, is to provide
21 truthful information about activities, criminal activities,
22 engaged in by myself, and then also provide information --
23 truthful information about any individuals I have information
24 about or associated with. I am supposed to testify in court if
25 asked to do so. And I am supposed to not get into any other

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Ochetel - Redirect

1 trouble, get arrested again.

2 Q. Does anyone have to get convicted at this trial in order
3 for you to get a 5K letter?

4 A. No.

5 Q. Does anyone even have to get charged with a crime in order
6 for you to get a 5K letter?

7 A. No.

8 Q. Does your 5K letter, for your sentencing, depend at all on
9 the outcome of this case?

10 A. No.

11 Q. Mr. Ochetel, you were asked some questions about your
12 relationship with David Villanueva. Do you recall those?

13 A. Yes.

14 Q. Now, how quickly did you begin cooperating with the
15 government after you were approached by the FBI?

16 A. Pretty quickly. I don't remember. Days, a week.

17 Q. From the very beginning, what did you tell the government
18 about Jeremy Reichberg's gun license?

19 A. I just told them why it was approved.

20 Q. And why was it approved, as you recall?

21 A. I just recall that Inspector Endall told me to wrap up
22 Jimmy Grant's guy, and I obliged.

23 Q. Did you ever, in any way, coordinate your testimony at this
24 trial with David Villanueva?

25 MR. MERINGOLO: Objection.

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Ochetel - Redirect

1 THE COURT: Thank you.

2 You can answer the question.

3 THE WITNESS: Outside of the text messages I discussed
4 and the voicemail he left, he left me that voicemail, I never
5 spoke to Dave since.

6 BY MS. RAVENER:

7 Q. So is it fair to say it's been about two years since you
8 even spoke to David Villanueva?

9 A. Yeah.

10 Q. And even then, did you ever talk to him about your
11 testimony relating to Jeremy Reichberg or Jimmy Grant?

12 A. No.

13 Q. You were asked a number of questions about the number of
14 your meetings with the government. Do you recall those
15 questions?

16 A. Yes.

17 Q. In those meetings with the government, did you provide
18 information only about Jimmy Grant and Jeremy Reichberg or also
19 about other people?

20 A. No. It was about myself and other people.

21 Q. Mr. Ochetel, you were also asked some questions about the
22 kinds of things you accepted as bribes. Do you remember that?

23 A. Yes.

24 Q. So let's be clear: What kinds of things did you accept as
25 bribes?

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Ochetel - Redirect

1 A. Multiple paid vacations, some cash, free booze, free
2 firearms, and paraphernalia, meals, entertainment was all part
3 of it.

4 Q. So was cash the only way that you were bribed, Mr. Ochetel?

5 A. No.

6 Q. You were also asked questions about an email at the license
7 division regarding how much Shaya Lichtenstein was charging for
8 pistol applications. Do you remember questions about that
9 topic?

10 A. Yes.

11 Q. Sitting here today, do you remember exactly what that email
12 said?

13 A. Not exactly. It was just --

14 MR. MERINGOLO: Objection.

15 THE COURT: Thank you.

16 You can answer the question.

17 THE WITNESS: -- basically just about how much money
18 he was charging for applications.

19 BY MS. RAVENER:

20 Q. Why was the amount that Shaya Lichtenstein charged for
21 applications considered a problem at the license division at a
22 certain point?

23 MS. NECHELES: Objection, your Honor.

24 THE COURT: Thank you.

25 You can answer the question.

IBJKGRA2

Ochetal - Redirect

1 MS. NECHELES: His mind?

2 THE COURT: Can you rephrase the question, counsel?

3 MS. NECHELES: Your Honor, I don't believe there were
4 any questions about this on cross.

5 THE COURT: Thank you.

6 I recall it.

7 You can proceed. You can proceed.

8 BY MS. RAVENER:

9 Q. Would it be helpful for me to ask the question again,
10 Mr. Ochetal?

11 A. Yes.

12 THE COURT: Please do, counsel.

13 Q. Mr. Ochetal, why was the amount that Shaya Lichtenstein was
14 charging for pistol license applications considered a problem
15 at the license division, to your understanding?

16 A. Well, to my understanding, there was some of us, including
17 myself, who knew or kind of knew what was going on and had a
18 hand in what was going on, and by having that email out there
19 specifying amounts of money he was charging, it would
20 ultimately confirm people's suspicions that something was going
21 on with him.

22 Q. Why would that be an issue? Why would the amount of money
23 charged confirm those suspicions, in your view?

24 MS. NECHELES: Objection; asked and answered.

25 MR. MERINGOLO: Objection.

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Ochetal - Redirect

1 THE COURT: Thank you.

2 Can you rephrase the question, counsel?

3 MS. RAVENER: Sure.

4 BY MS. RAVENER:

5 Q. Let me see if I can just show you Government Exhibit 1001,
6 which has been marked for identification. Take a moment and
7 read it to yourself.

8 (Pause)

9 Q. So, Mr. Ochetal, let me ask you a couple of questions now
10 that you have had an opportunity to review it.

11 Around what time did this email about the amount Shaya
12 Lichtenstein was charging get circulated at the license
13 division?

14 MS. NECHELES: Objection, your Honor.

15 THE COURT: Thank you.

16 Can you come up.

17 (Continued on next page)

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Ochetal - Redirect

1 (At the sidebar)

2 THE COURT: Thank you.

3 I'm sorry, there's an objection?

4 MS. NECHELES: Yes, your Honor. She's just going to
5 read hearsay now, I think. I don't understand where this is
6 going. I don't understand -- I don't believe I asked about
7 what Shaya was charging for --

8 THE COURT: Thank you.

9 Can I ask how this fits into the redirect; i.e., how
10 it fits into the scope of the cross and what the specific issue
11 that you're trying to get from this witness at this point is?

12 MS. RAVENER: Your Honor, Ms. Necheles specifically
13 elicited a discussion of the circulation of this email on
14 cross-examination and made the point, in essence, that when it
15 was circulated, Mr. Lichtenstein was kicked out of the license
16 division. I'd like to see if I can refresh the witness'
17 recollection to put a time frame on that, and I will be moving
18 on shortly.

19 MS. NECHELES: Your Honor, I think all I asked was
20 trying to place a time when he left. If that's all they're
21 asking is time -- but if they're going into the substance, I
22 didn't go into the substance of anything about Shaya, how much
23 he was making. I think what I asked specifically was, was
24 there a time when he became persona non grata, and I actually
25 thought that he was going to be answering -- I thought that the

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Ochetal - Redirect

1 time was when the new person came in to take over, and he no
2 longer allowed expeditors in. I wasn't referring to this
3 email. I didn't bring up the email. I talked about when he
4 became persona non grata.

5 THE COURT: I understand.

6 Counsel for the United States, you're planning to
7 elicit from the witness the time frame, but not go further; is
8 that correct?

9 MS. RAVENER: At this point, I think that's
10 sufficient.

11 THE COURT: Fine. Thank you. You can proceed.

12 MS. RAVENER: Thank you.

13 (Continued on next page)

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Ochetel - Redirect

1 (In open court)

2 THE COURT: Thank you, counsel, you can proceed.

3 MS. RAVENER: Thank you.

4 BY MS. RAVENER:

5 Q. Mr. Ochetel, do you recall now approximately when this
6 issue occurred at the license division when word got out about
7 how much Shaya Lichtenstein was charging for pistol licenses?

8 A. At the end of the year 2015.

9 Q. Let's turn to Mr. Reichberg.

10 Did Mr. Reichberg appear unsure of himself when you
11 met him?

12 A. No.

13 Q. Did Mr. Reichberg appear confused about the license
14 division's requirements?

15 A. No.

16 Q. Did you tell Mr. Reichberg that he needed more
17 documentation?

18 A. At some point, yes.

19 Q. Now in the course of your duties at the license division,
20 Mr. Ochetel, when you were doing your job, did you take the
21 applicants' word at face value or did you investigate what they
22 said?

23 A. Well, after they submitted their application is when the
24 investigation process would start and you would investigate
25 business location, reasons for the application, so you would

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Ochetel - Redirect

1 look into what you were provided.

2 Q. And how about in reviewing a letter of necessity, when you
3 were doing your job at the license division did you take what
4 they said at face value or did you investigate what an
5 applicant said in their letter of necessity?

6 A. You would -- I would investigate in conjunction with the
7 documentation I would receive.

8 Q. Did you investigate what Jeremy Reichberg told you about
9 himself?

10 A. No, I didn't perform a full investigation into it.

11 Q. Why not?

12 A. I understood it not to be totally necessary and to take up
13 my time doing it.

14 Q. Where did you get that understanding?

15 A. I guess I first assumed that understanding when Sergeant
16 Villanueva texted me that Jimmy Grant's guy was coming in, take
17 care of him. So that's I guess when I first got that
18 understanding and proceeded after that.

19 Q. So is it fair to say that from the beginning you expected
20 this license would not be scrutinized?

21 MS. NECHELES: Your Honor, I object to the leading.

22 THE COURT: Counsel, could you ask the question again,
23 please.

24 Q. Mr. Ochetel, did you treat this license application
25 differently than the other applications you handled when you

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Ochetel - Redirect

1 were doing your job and not taking bribes?

2 MS. NECHELES: Objection, there's no bribe
3 associated --

4 THE COURT: Thank you. Counsel, could you please
5 rephrase the question.

6 Q. Mr. Ochetel, did you handle this gun license differently
7 than you normally would in the course of your duties?

8 A. I just did not provide a full review of the application.

9 Q. Why not?

10 A. For the same understanding that I started out with.

11 Q. Which was that?

12 A. I started out knowing when Sergeant Villanueva told me that
13 the applicant Jeremy, Jimmy Grant's guy, was coming in, to take
14 care of him. So I guess that's where I first got that idea in
15 my head that it would not be a full review, because I knew
16 after I was done with it nobody would check up or review it
17 after that. And I mean I had a lot of other cases, so to tell
18 you the truth, I didn't really look at it like a big deal,
19 because I had other -- I had a lot of other work, and to me I
20 took it as if it's going to get done regardless. Knowing the
21 workload that I usually do, I just accepted it for what it was.

22 Q. Mr. Ochetel, based on your understandings at the time, did
23 you believe that your independent review of this application
24 mattered?

25 A. No, because there wouldn't be a second review.

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Ochetal - Redirect

1 Q. Why not?

2 A. For the same reason, started with the initial introduction,
3 and then when I was just told to wrap it up by Inspector
4 Endall, I wasn't asked hey, let me see it and review it. So I
5 already knew just put it together as it was and that would be
6 it.

7 Q. You were also asked questions about the time when Jeremy
8 Reichberg's file became an incident. Do you remember those?

9 A. Yeah.

10 Q. Mr. Ochetal, why weren't you personally worried when Jeremy
11 Reichberg's file became an incident?

12 A. I guess I would say I wasn't worried because I didn't
13 really view it as my case.

14 Q. Why?

15 A. Because I didn't -- I didn't put the review, I didn't vet
16 it and then make my decision. I feel like it was my fault. So
17 I wasn't so worried because I wasn't -- didn't make the
18 ultimate decision on approving the file.

19 Q. Well, you put your first approval into the system, right?

20 A. That I did.

21 Q. Why do you say it wasn't your decision when you did that?

22 A. Well, the decision was instructed for me to do so, and yes,
23 I did do it, made the first approval because it was a necessary
24 step before a license number could even be generated on a
25 second level approval, so I -- in theory, I guess I had to do

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Ochetal - Redirect

1 it just for the sake of the process, and I was instructed to
2 approve it by Inspector Endall and for the specific type of
3 license and that's what I did.

4 Q. You were also asked a number of questions about favors that
5 were done at the license division. Do you remember that?

6 A. Yes.

7 Q. And some of those favors were done in exchange for money
8 and gifts, correct?

9 A. Yep.

10 Q. And some of those favors were done when high-ranking
11 officers exercised their influence, correct?

12 A. Yes.

13 Q. Other than Jeremy Reichberg's gun license, can you recall
14 any other time when you helped give a police officer's
15 associate a full carry --

16 MR. MERINGOLO: Objection.

17 Q. -- gun license without proper documentation?

18 MR. MERINGOLO: Objection.

19 THE COURT: You can answer the question.

20 A. I don't remember a full carry. I do know I helped plenty
21 of high-ranking members of the department help their associates
22 through the process and get -- help them get their license,
23 give them first approvals. Off the top of my head I don't
24 remember any full carries right off -- right away.

25 Q. So let me be clear, can you recall any other time other

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1 than this case when you helped a police officer's associate get
2 a full carry license right off the bat --

3 MR. MERINGOLO: Objection.

4 Q. -- without requiring proper documentation?

5 MS. NECHELES: Objection. This was just asked and
6 answered.

7 THE COURT: Thank you. Sustained.

8 Q. Can you recall any time when you helped give a police
9 officer's associate who was a first-time applicant a full carry
10 gun license within two months?

11 MS. NECHELES: Objection, your Honor.

12 THE COURT: Thank you. You can answer the question.

13 A. Not with a full carry being the initial license.

14 Q. Why did you do that here?

15 A. I did it, like I said, I was just -- Inspector Endall told
16 me to wrap up this case, and that's what I did.

17 MS. RAVENER: One moment, your Honor.

18 THE COURT: Please take your time.

19 (Pause)

20 MS. RAVENER: No further questions.

21 THE COURT: Thank you.

22 Counsel for Mr. Reichberg.

23 RECROSS EXAMINATION

24 BY MS. NECHELES:

25 Q. Sir, you were just asked -- you said you did not coordinate

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Ochetal - Recross

1 your testimony with Mr. Villanueva, right?

2 A. No.

3 Q. But he wanted to, right?

4 MS. RAVENER: Objection.

5 THE COURT: Thank you. Can you rephrase, please.

6 Q. It was your understanding he wanted to do that, right?

7 A. In my head I thought that he might have wanted to do that.

8 I don't know for certain.

9 Q. But that's what you believe -- that's the reason you
10 believed he was reaching out to you, right?

11 MS. RAVENER: Objection.

12 THE COURT: Thank you. You can answer the question.

13 A. It could have been one of them. Part of it I thought he
14 didn't hear from me for a while so maybe he actually was
15 concerned, or he might have been seen what I was thinking and
16 what I knew. But I didn't answer him and I didn't give it much
17 thought. So he never said specifically in his message that he
18 needed to meet up with me and discuss things. So I really
19 don't know.

20 Q. And with respect to -- you were asked just now about
21 whether Mr. Reichberg appeared confused about the license
22 department requirements when he came in. Do you recall those
23 questions just now by the prosecutor?

24 A. Yes.

25 Q. He came in and said ridiculous things, right,

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1 Mr. Reichberg?

2 MS. RAVENER: Objection.

3 THE COURT: Can you rephrase?

4 Q. When he came in he thought he was going to get his gun
5 license that day, right?

6 A. Yes.

7 Q. And that's unheard of, right?

8 A. I hadn't heard of it before.

9 Q. And it was obvious to you that he did not know how the
10 process worked, right?

11 MS. RAVENER: Objection.

12 THE COURT: Thank you. You can answer the question.

13 A. I assumed he didn't.

14 MS. RAVENER: Objection, your Honor.

15 THE COURT: Sustained.

16 Q. You were just asked whether he was confused, but in fact
17 you knew, based on the things he said, that he had no idea how
18 the process worked, right?

19 MS. RAVENER: Objection.

20 THE COURT: Thank you. Mr. Ochetal, you can answer
21 that question.

22 A. I don't think -- nobody knows fully how the process works
23 to the T.

24 Q. I'm not asking you that, I'm asking you about how
25 Mr. Reichberg appeared that day. Do you understand that

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1 question?

2 MS. RAVENER: Objection.

3 THE COURT: Thank you. Counsel, no commentary,
4 please. If there's a question, please ask it.

5 Q. Sir, I'm asking you not in general, but I'm asking about
6 Mr. Reichberg that day made comments that made it clear to you
7 that he did not know how the licensing process worked, correct?

8 MS. RAVENER: Objection.

9 THE COURT: Thank you. You can answer the question.

10 A. I mentioned the comments he made to me, I just don't know
11 how to answer that. I know what the comments were, I don't
12 know what is in somebody's thought process.

13 Q. Well, you just answered the government when they asked you
14 whether he seemed confused, you had no problem answering the
15 government's question, right?

16 MS. RAVENER: Objection.

17 THE COURT: Thank you. Sustained.

18 Q. Sir, I'm asking the same question, whether his comments
19 indicated to you that he did not know how the process worked.

20 MS. RAVENER: Objection.

21 THE COURT: Thank you. You can answer the question.

22 A. I guess he didn't fully understand the entire process.

23 Q. When you say "fully," he didn't have a clue, did he?

24 MS. RAVENER: Objection.

25 THE COURT: Thank you. Sustained.

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Ochetal - Recross

1 Q. When you say "fully," he didn't know he couldn't get a
2 license that day, right?

3 MS. RAVENER: Objection.

4 THE COURT: Thank you. Sustained.

5 Q. Sir, you were asked some questions by the government about
6 whether you ever did a -- managed to get a full carry -- gave
7 someone a full carry in this time frame when you were not
8 bribed, right? Do you recall those questions?

9 A. Right.

10 Q. To be clear, Mr. Reichberg never gave you a bribe, right?

11 A. No, never.

12 Q. Mr. Grant never gave you a bribe, right?

13 A. Never.

14 Q. There was no bribe involved in this, correct?

15 MS. RAVENER: Objection. Foundation.

16 THE COURT: Thank you. Sustained.

17 Q. Well, there was no bribe given to you, correct?

18 A. No, I did not receive any bribes.

19 Q. To the best of your knowledge, Mr. Villanueva never
20 received a bribe with respect to this application, correct?

21 MS. RAVENER: Objection, foundation.

22 THE COURT: Thank you. Sustained.

23 Q. To your knowledge, did Mr. Villanueva receive a bribe with
24 respect to this?

25 MS. RAVENER: Objection, foundation.

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1 THE COURT: You can answer the question.

2 A. No, to my knowledge, Mr. Villanueva did not receive a
3 bribe.

4 Q. But there was a practice in the licensing department of
5 expediting files for friends or family of police officers,
6 right?

7 A. Yes.

8 Q. And that's all that happened here, right? Consistent with
9 that practice, this was expedited, right?

10 MS. RAVENER: Objection, your Honor.

11 THE COURT: Sustained.

12 Q. Well, consistent with that practice, Mr. Reichberg's
13 license was expedited here, right?

14 MS. RAVENER: Objection.

15 THE COURT: Thank you. Sustained.

16 Q. Well, this was not unusual for you to expedite a file like
17 this, right?

18 MS. RAVENER: Objection.

19 MS. NECHELES: Your Honor, knowledge question about
20 unusual.

21 THE COURT: You can answer the question.

22 A. Can you please rerepeat that?

23 Q. It was not unusual for you to expedite a file like this,
24 right?

25 A. Expediting was not unusual.

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1 Q. And sir, you were asked some questions just now about why
2 you weren't worried when Mr. Reichberg's file became an
3 incident, correct?

4 A. Yes.

5 Q. And sir, am I correct you were not worried because this
6 didn't involve a bribe, right?

7 MS. RAVENER: Objection.

8 THE COURT: Thank you. Sustained.

9 MS. NECHELES: Judge --

10 THE COURT: You can ask the question again.

11 Q. Am I correct that your state of mind at the time was you
12 knew that this file did not -- there was no bribe that had been
13 given to you on this to expedite this, correct?

14 A. I was not too worried.

15 Q. If you could answer my question.

16 A. Excuse me?

17 Q. Do you understand my question?

18 MS. RAVENER: Objection.

19 THE COURT: Mr. Ochetal, please listen to question
20 that Ms. Necheles is asking and respond just to that.

21 Can you please ask the question again, Ms. Necheles.

22 MS. NECHELES: Yes. Thank you, your Honor.

23 Q. You were not worried because no bribe had been given to you
24 to expedite this file, correct?

25 A. In this file I was not worried.

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Ochetal - Recross

1 Q. Well, that was one of the reasons you were not worried,
2 right?

3 A. The reason I wasn't worried was because I considered it
4 wasn't on my hands.

5 Q. Well, you filled out the paperwork on this, right?

6 A. Yep.

7 Q. And if there wasn't sufficient paperwork, that was your
8 fault, right?

9 MS. RAVENER: Objection.

10 THE COURT: Thank you. You can answer the question.

11 A. To an extent it would be my fault up until it got reviewed,
12 which did not happen, and that was why I said I wasn't worried.

13 Q. Sir, am I correct that you also were not worried because
14 Mr. Reichberg qualified for this license, right?

15 A. I didn't say that I wasn't worried because he qualified.

16 Q. Well, but I'm asking you that question. He qualified for a
17 business carry, correct?

18 A. Not in my opinion.

19 Q. Well, he was carrying diamonds as a salesman around the
20 city as part of his job, right?

21 MS. RAVENER: Objection, your Honor.

22 THE COURT: Thank you. Sustained.

23 Q. Well, to the best of your knowledge, based on his
24 application, that's what he was doing, correct?

25 MS. RAVENER: Objection.

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1 THE COURT: Thank you. You can answer the question.

2 A. Based on his application, yes.

3 Q. And so based on his application, to the best of your
4 knowledge, he was carrying diamonds as a salesman, correct?

5 A. Yes.

6 Q. And am I correct that that is the type of thing that
7 qualifies someone for a business carry, right?

8 A. Not all the time.

9 Q. Okay. Not all the time, but some of the time, right?

10 A. If I would do a proper investigation and a write up and
11 review of what's being done as far as the occupation and how
12 often and stuff like that, I could make that determination. So
13 I won't say no, but I never got the chance to do that.

14 Q. Sir, so I'm not asking about process for a minute, right
15 now I'm just asking you about whether that type of person would
16 be qualified for a business carry, someone who was carrying
17 diamonds around to sell them.

18 MS. RAVENER: Objection, your Honor.

19 THE COURT: Thank you. You can answer the question.

20 A. I can't make that determination without an investigation.

21 Q. Okay. But you knew that if someone looked at the file,
22 they would not believe that Mr. Reichberg was not qualified,
23 right?

24 MS. RAVENER: Objection.

25 THE COURT: Thank you. Sustained.

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1 Q. Well, wasn't that in your mind, wasn't that why you were
2 not worried is because you knew he was qualified?

3 MS. RAVENER: Objection.

4 THE COURT: Thank you. You can answer the question.

5 A. Like I said, the only reason I was not worried was because
6 of instructions I was given. And it was one of those things
7 that I didn't fully review, and I gave it to a supervisor who
8 approved it, and they knew I didn't review it. So that's why I
9 wasn't worried as I would be if I did review it.

10 Q. Sir, wasn't the only thing you were worried about was that
11 the file might not have all the proper paperwork?

12 MS. RAVENER: Objection. Asked and answered
13 repeatedly.

14 THE COURT: Thank you. Sustained.

15 Q. Sir, you were asked about your -- again, about whether you
16 gave anyone else a full carry within two months, right?

17 A. Yes.

18 Q. And you did give special carries within that time frame,
19 right?

20 A. That's possible.

21 Q. And those are the same as full carries, right?

22 A. They're not the same, no.

23 Q. Well, they allow someone to do exactly the same thing, to
24 carry a gun and around for business, right?

25 A. Ultimately, yes.

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Ochetal - Recross

1 Q. And they require all the same proof of cause for someone to
2 get that, right?

3 A. They do require proof of cause.

4 Q. And you expedited those much more rapidly than this, right?

5 A. I'm not sure, but if I did, the reason would have been
6 prior firearm experience, prior license, and prior background
7 check by an adjoining county. So although they're similar, the
8 investigation is a little bit different.

9 I don't know if people understand the explanation.

10 Q. Sir, you don't need firearm experience to get a gun license
11 in New York State, right?

12 A. You don't need it, no.

13 Q. It's nowhere in any of the regs, right, nowhere in any
14 regulations that you need prior firearm experience, right?

15 MS. RAVENER: Objection.

16 THE COURT: Thank you. Sustained.

17 Q. Sir, you were familiar with the regulations, right?

18 A. Yes.

19 Q. So when you mentioned prior firearm experience, that was
20 not a requirement to get a gun license, right?

21 A. Not a requirement.

22 Q. And there's not even anything in the regulations to have
23 prior training on guns, right?

24 A. We ask for it when we could, even though it wasn't
25 required, it was just a public safety, that's all.

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1 Q. But if someone had a special carry and had it from
2 somewhere else, you don't know if they had firearm training,
3 right?

4 MS. RAVENER: Objection.

5 THE COURT: Thank you. Sustained.

6 Q. I want to ask, you testified just now about the government
7 asking you whether your 5K letter depends on the outcome of the
8 case. Do you recall those questions?

9 A. Yes.

10 Q. Do you recall earlier you testified that you don't know
11 what substantial assistance means?

12 Do you recall that testimony, sir?

13 MS. RAVENER: Objection, your Honor.

14 THE COURT: Thank you. You can answer the question.

15 A. I don't. I'm sure if you're saying, it was said, but to me
16 substantial is just, for me, is just recalling truthfully what
17 I can remember about a situation, nothing more, nothing less.
18 I'm not trying to take away or add anything, so --

19 Q. But sir, you recall that your cooperation agreement
20 requires you to give substantial assistance as determined by
21 the government, and substantial assistance is not defined in
22 the cooperation agreement, right?

23 MS. RAVENER: Objection, compound.

24 THE COURT: Could I ask you to rephrase the question.

25 Q. You recall that your cooperation agreement requires you to

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Ochetal - Recross

1 give substantial assistance as determined by the government,
2 right?

3 A. Sure.

4 Q. And you pointed out before it doesn't define what
5 substantial assistance is, right?

6 A. I don't know about that per se, I just -- I don't know what
7 one considers substantial and what another considers
8 substantial, I'm just saying what I remember and know. I don't
9 know if it's substantial or not.

10 Q. So it's up to the government to decide whether you helped
11 them or not, right?

12 A. I suppose they know if I'm helping them, if I'm being
13 truthful and doing what I'm supposed to do.

14 Q. You understand it's an additional requirement beyond being
15 helpful you also have to give substantial assistance. You
16 understand that, don't you?

17 MS. RAVENER: Objection, your Honor.

18 THE COURT: Thank you. You can answer the question.

19 A. I am just considering what I'm doing to be substantial. If
20 it's not defined and if it's not defined on their terms then
21 there's nothing I can do about that, I can only control what I
22 know and remember and that's it.

23 Q. But you're trying your hardest to give the government
24 substantial assistance, aren't you?

25 A. I'm just trying my hardest to remember what I can and

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1 provide information when asked.

2 MS. NECHELES: I have no further questions, your
3 Honor.

4 THE COURT: Thank you. Counsel for Mr. Grant.

5 RECROSS EXAMINATION

6 BY MR. MERINGOLO:

7 Q. Mr. Ochetal, are you aware that 65 percent of people who
8 apply for business carry get their gun license within four
9 months?

10 MS. RAVENER: Objection.

11 THE COURT: Thank you. Sustained.

12 Q. You worked in the gun licensing division from 2009 to 2016,
13 correct?

14 A. Yes.

15 Q. Are you aware during that period of time that 65 percent of
16 people get their business carry within four months?

17 MS. RAVENER: Objection, scope.

18 THE COURT: Thank you. Sustained.

19 MR. MERINGOLO: No questions.

20 THE COURT: Counsel for the United States?

21 MS. RAVENER: No further questions.

22 THE COURT: Thank you very much.

23 Thank you, Mr. Ochetal, for your testimony. You can
24 step down.

25 So ladies and gentlemen, it's about our lunch time, so

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1 I'm going to propose that we take our break now. During this
2 break please don't discuss the case amongst yourselves, don't
3 do any research on the case, don't communicate with anyone else
4 about the case. I will expect to see you back here in 30
5 minutes. Thank you.

6 (Jury not present)

7 THE COURT: Thank you very much, counsel, you're doing
8 well. I understand the next thing that we're expecting is that
9 recordings will be played. I have the limiting instruction as
10 suggested by the defense, which I will propose to administer
11 just as the government begins the next set of recordings.

12 Are there any other issues that we should anticipate
13 now with respect to any subsequent witnesses that the
14 government is going to call today?

15 MR. BELL: Yes, your Honor, the government anticipates
16 calling Avi Goldstein, Lieutenant Michael DeMartino, and should
17 time allow, an individual named Horace Norville. I don't
18 anticipate any issues. Life is surprising sometimes, but I
19 don't think there's anything that needs to be fronted.

20 THE COURT: Counsel for Mr. Reichberg, anything that
21 you would like to raise before we take our lunch recess?

22 MS. NECHELES: No, your Honor. If there is anything
23 else, I will raise it right before. I don't think there is.

24 MR. MERINGOLO: No.

25 THE COURT: Thank you very much. I would like to see

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1 you back here -- I would like to begin just after noon with the
2 jury, so please be back here, counsel, at noon. See you then.

3 (Luncheon recess taken)

4 (Continued on next page)

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1 (In open court; jury not present)

2 THE COURT: Counsel, are you ready to proceed? I'll
3 ask Mr. Daniels to bring in the jury.

4 MR. BELL: Let me just make sure our next witness has
5 resurfaced after the short lunch.

6 THE COURT: Please do.

7 MS. NECHELES: Your Honor, I would just say that I
8 will be showing this witness a bunch of documents that were
9 subpoenaed from him and asking him to identify them as business
10 records, but I won't seek to put them in evidence today, your
11 Honor. I'll just do that as a foundational matter, so that if
12 I seek to put them in evidence later, that they're already --
13 there is a foundation for that.

14 THE COURT: Thank you.

15 Does he have the kind of role that would permit him to
16 provide the necessary foundational information?

17 MS. NECHELES: We subpoenaed them from him, and he
18 provided them.

19 MS. LONERGAN: Your Honor, we never received them.

20 MS. NECHELES: I think we just -- you never received
21 them?

22 MS. LONERGAN: No.

23 MS. NECHELES: I don't think we marked -- I think some
24 of them you have, which were marked as exhibits. I think you
25 have -- actually, I think we marked --

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1 MS. LONERGAN: The production, we didn't receive, and
2 I'm pretty sure --

3 MS. NECHELES: I'm just marking it all, and I am not
4 putting it in evidence today. I think we've now asked that the
5 whole thing be sent to -- I think we emailed it to you. You'll
6 have the whole package, but I'm not putting in any of it.

7 MS. LONERGAN: Can we have it before the witness comes
8 on the stand, so we can take a look at it?

9 MS. NECHELES: I'll give it to you now.

10 THE COURT: Thank you.

11 Ms. Necheles, can you describe, as a general matter,
12 what the nature of the documents is that you subpoenaed?

13 MS. NECHELES: They're records that we subpoenaed of
14 travel records and emails with Mr. Rechnitz from Luxury Travel.
15 This was his travel agent, essentially. So they're just the
16 same kind of records, and most of them is what the government
17 has already put in evidence, but I think that there are -- or
18 gave to us. We just subpoenaed everything from him. The
19 government was aware of it. I saw it in the notes that they
20 discuss --

21 THE COURT: Thank you.

22 I understand the next witness is from this travel
23 agency. I understand that the documents that you're referring
24 to, Ms. Necheles, are documents that were subpoenaed from the
25 witness, and that some subset of the documents that you are

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1 describing have already been presented to the defense by the
2 government. Is that correct?

3 MS. NECHELES: Yes, the vast majority.

4 THE COURT: Thank you.

5 Can you identify which ones do not fit into the scope
6 of the ones that the government has already provided that may
7 help to focus the conversation?

8 MS. NECHELES: Okay. The ones that may have not been
9 provided are ones dated -- relate to travel in 2016 and 2017.
10 And, your Honor, I'm not saying I'm going to be putting these
11 in evidence, I just wanted to mark them at the time.

12 So this is about, I think, 20 -- 20 pages, 22 pages.

13 THE COURT: Thank you.

14 Are you referring to a single document, or is it a
15 series of documents related to a particular calendar year?

16 MS. NECHELES: It's a series of emails. He would
17 email the invoices to Mr. Rechnitz for his travel.

18 THE COURT: Thank you.

19 So these are emails with invoices?

20 MS. NECHELES: That's correct.

21 THE COURT: Is there any other substance in the
22 emails?

23 MS. NECHELES: There might be some emails that refer
24 to their -- the plans or what Mr. Rechnitz was asking for,
25 although I think that those are mainly in the materials that

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1 the government sent to us previously where Mr. Rechnitz is
2 saying I want to get the following. And he would respond,
3 okay, I'm looking into it, or I'm still trying to get those
4 together, but it all refers to travel plans of Mr. Rechnitz.

5 THE COURT: Thank you.

6 Are you proposing to label each of the subsidiary
7 documents within each time span as an exhibit, or are you
8 proposing to mark the entirety of the documents for economy
9 here?

10 MS. NECHELES: I was going to try to do it very quick.
11 I will just show it to him, do you recognize those as business
12 records of yours and the business records, but just make it one
13 document, he can look through it, and then I thought, your
14 Honor, we could deal with whatever objections there might be at
15 a later time outside of the presence of the jury, just so we
16 don't have to call him back to authenticate documents at a
17 later time.

18 THE COURT: Thank you.

19 Counsel for the United States?

20 MS. LONERGAN: One moment, your Honor?

21 THE COURT: Thank you.

22 (Pause)

23 MS. LONERGAN: Your Honor, a couple of things: To the
24 extent that defense counsel wants to go outside the scope of
25 the direct on this point, we don't object, but we do want a

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1 couple of things: We do reserve our objections to the
2 documents for a later time, and, also, we would like it to be
3 very clear, and even in the way the witness is questioned, that
4 there is nothing on the record about what the documents are,
5 that they relate to Mr. Rechnitz, the time frame. Just if they
6 are shown to him in a very basic, do you recognize these, are
7 these business records, she can even lead on the business
8 records question, because we don't want a description in the
9 record that there are additional travel records related to
10 Mr. Rechnitz before any decision has been made about whether
11 those documents will, in fact, come into evidence.

12 THE COURT: Thank you.

13 Counsel for Mr. Reichberg?

14 MS. NECHELES: Well, your Honor, I think I would be
15 able to elicit that there were additional records without
16 showing him. You know, just say the government has asked you
17 about some, shown you some, but he traveled a lot, right, and
18 you did all of that travel for him, and that was -- so ask that
19 kind of question. I just don't want to have an insufficient
20 foundation, your Honor. I want -- I'm really doing this for
21 foundational purposes to say, there are these other records,
22 business records, and these are all business records of yours
23 dealing with Mr. Rechnitz.

24 MS. LONERGAN: Your Honor, I think that conflates two
25 issues. One is the question about other travel with

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1 Mr. Rechnitz, which we think we may object to on relevance
2 grounds, but that's separate from what we're talking about
3 business records. We're allowing Ms. Necheles to go beyond the
4 scope to put in the business records foundation as to these
5 documents. We just don't see any reason why she needs to
6 describe the documents on the record here, given that later, we
7 may have an objection that the Court may sustain about the
8 relevance of these documents and whether they, in fact, are
9 coming into evidence. If they're not coming into evidence, we
10 see no reason for them to have been described on the record
11 here today.

12 MS. NECHELES: Your Honor, can I just make one point:
13 It's not going beyond the scope when he's called to testify
14 about travel records, and that he does have travel records --

15 THE COURT: I don't think that is necessary. What's
16 your view regarding -- because the government consents, in any
17 event, what is your view regarding the proposal that you focus
18 the questions --

19 MS. NECHELES: I assume the government is waiving any
20 objection to foundation, that if I'm limiting the questions,
21 that they are not going to object to the foundation of the --
22 for any of these documents at a later date.

23 MS. LONERGAN: Your Honor, I think she still needs to
24 ask foundational questions. She just doesn't need to describe
25 the documents as part of those foundational questions. She can

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1 say, I'm showing you what has been marked for identification as
2 Defense Exhibit X, do you recognize that, are those also -- are
3 those records of Luxury Connections? That's why I'm saying she
4 can lead in that way, but she doesn't need to mention time
5 frame or Mr. Rechnitz to properly ask the foundational
6 questions.

7 MS. NECHELES: No, your Honor, I need to ask, are
8 those all of the records during these time frame of trips that
9 you took or that Mr. Rechnitz -- all of the business records
10 that you have with respect to Mr. Rechnitz for travel? That's
11 what I would be asking to establish what I need to establish
12 here for a later date. It might come in, it might not come in.
13 I think that the government worries too much about what they
14 ask versus what I ask. The trial is going to be six weeks
15 long. The jury is going to know they ask some things, I ask
16 some things. I don't really see this as such a big deal, that
17 the government gets upset every time I ask about something,
18 that I might be misleading the jury. I don't think that's an
19 issue. I think all I want to do is establish what these are,
20 and then we don't need to waste time today on it. We'll just
21 deal with it later.

22 THE COURT: Thank you.

23 I'll allow you to ask appropriate foundational
24 questions with respect to the documents at issue, and I'm not
25 imposing a particular constraint on you. I do ask that you not

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1 identify the content of the documents in depth as part of your
2 foundational questions. I don't understand that to be
3 necessary.

4 MS. NECHELES: I will just ask that -- are those all
5 of the records of Mr. Rechnitz's travel with you?

6 MS. LONERGAN: I don't think that's a proper or
7 necessary foundational question, your Honor. I mean, I don't
8 know why she has to ask that to -- if she wants -- the point is
9 she cut a subpoena. If she's concerned about his subpoena
10 compliance, that can be something that can be addressed outside
11 the presence of the jury. I don't know why she needs to ask as
12 a foundational business record question, are those all of the
13 records related to Mr. Rechnitz.

14 THE COURT: Thank you.

15 MS. NECHELES: Because --

16 THE COURT: I'm sorry. I'm happy to allow counsel for
17 defendant to inquire in that way.

18 I have some questions, not having seen what all of the
19 component documents are of the large exhibit that you're
20 planning to show the witness, about whether or not the, I'll
21 call it, volume approach to the foundational questions will
22 work with respect to each of the component documents. I don't
23 know the answer to that at this point.

24 MS. NECHELES: Oh, but they will, your Honor, so we
25 don't waste time.

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1 THE COURT: Thank you.

2 I will trust that you've analyzed that. I just wanted
3 to make it clear that I haven't made a determination on that
4 issue at this point.

5 MS. NECHELES: If it doesn't, I'll have to slow it
6 down, but I'm hoping I won't have to.

7 THE COURT: Thank you.

8 Are we ready to proceed?

9 MR. MERINGOLO: One other thing, Judge?

10 THE COURT: Please.

11 MR. MERINGOLO: Do we know where the folders are from
12 Mr. Villanueva's locker and if that folder that I got this
13 morning was part of the government discovery, which none of it
14 has been turned over to us?

15 THE COURT: Thank you.

16 Let's take that up after the jury is done for the day.

17 Mr. Daniels, can you please bring them in.

18 I will raise that issue again at the end of the trial
19 day. Mr. Meringolo, thank you for raising that, and I hope
20 that during this time, someone in the background of the
21 government is inquiring about that question.

22 (Continued on next page)

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Goldstein - Direct

1 (Jury present)

2 THE COURT: Thank you. Ladies and gentlemen, you can
3 be seated. Welcome back, ladies and gentlemen of the jury.
4 Thank you.

5 Counsel for the United States, can I turn to you?

6 MS. LONERGAN: Your Honor, the government calls Avi
7 Goldstein.

8 THE COURT: Thank you.

9 AVI GOLDSTEIN,

10 called as a witness by the Government,

11 having been affirmed, testified as follows:

12 THE DEPUTY CLERK: Can you please state your name for
13 the record and spell your first and last name slowly as well?

14 THE WITNESS: Avi Goldstein, A-v-i G-o-l-d-s-t-e-i-n.

15 THE DEPUTY CLERK: Thank you.

16 THE COURT: Good. Thank you.

17 Counsel for the United States, you can inquire.

18 MS. LONERGAN: Thank you, your Honor.

19 THE COURT: Thank you.

20 DIRECT EXAMINATION

21 BY MS. LONERGAN:

22 Q. Good afternoon, Mr. Goldstein.

23 A. Good afternoon.

24 Q. Where do you work?

25 A. Luxury Connections.

IBJKGRA4

Goldstein - Direct

1 Q. What is Luxury Connections?

2 A. A concierge travel agency.

3 Q. Can you briefly describe what you mean by "a concierge
4 travel agency"?

5 A. We're discounted rates concierge services for our clients.

6 Q. What kinds of things does Luxury Connections book for
7 clients?

8 A. We book hotels.

9 Q. What's your title?

10 A. President/CEO.

11 Q. How long have you been working at Luxury Connections?

12 A. Over eight years.

13 Q. Does Luxury Connections keep records of its business?

14 A. Yes.

15 Q. What, kind of records?

16 A. Emails, text messages, booking confirmations.

17 Q. Are these records saved?

18 A. Yes.

19 Q. What items are saved?

20 A. Emails, text messages, booking confirmations.

21 Q. When are they saved?

22 A. When the booking takes place.

23 Q. And why do you save these kinds of records?

24 A. Transparency, continuing dialogue with clients, reference
25 to past bookings.

IBJKGRA4

Goldstein - Direct

1 Q. Mr. Goldstein, I'm going to show you a series of documents.
2 You have a binder on the witness stand. We can also put them
3 on the screen.

4 MS. LONERGAN: Mr. Hamilton, can we display for the
5 witness, the Court, and the parties first what's been marked
6 for identification as Government Exhibit 911.

7 Q. Mr. Goldstein, after I show you a series of documents, I'm
8 going to ask you a question at the end of that about all of
9 them. Okay?

10 Just for Government Exhibit 911, do you recognize this
11 document?

12 A. Yes.

13 MS. LONERGAN: Now can we put on for the witness, and
14 the Court, and parties what's been marked for identification as
15 Government Exhibit 914.

16 Q. Mr. Goldstein, do you recognize this document?

17 A. Yes.

18 MS. LONERGAN: Now can we display for the witness, the
19 Court, and the parties Government Exhibit -- what's been marked
20 for identification as Government Exhibit 913.

21 Now, can we show what's been marked for identification
22 to the witness, the Court, and the parties as Government
23 Exhibit 1225.

24 Again, for the witness, the Court, and the parties,
25 Government Exhibit 912.

IBJKGRA4

Goldstein - Direct

1 BY MS. LONERGAN:

2 Q. Mr. Goldstein, did you recognize each one of those
3 documents?

4 A. I did.

5 Q. Is each one of these a record of Luxury Connections?

6 A. Yes.

7 Q. Were they made in the ordinary course of the business of
8 Luxury Connections?

9 A. Yes.

10 Q. Were they made at or near the time of the events reflected
11 in the records?

12 A. Yes.

13 Q. Were they saved in the ordinary course of the business of
14 Luxury Connections?

15 A. Yes.

16 Q. One of the documents I showed you had some text messages.
17 Were these text messages exchanged at or near the time of the
18 events in question?

19 A. Yes.

20 MS. LONERGAN: Your Honor, the government offers
21 Government Exhibits 911 through 914 and 1225.

22 THE COURT: Thank you.

23 Counsel for defendants?

24 MS. NECHELES: No objection, your Honor.

25 MR. MERINGOLO: No objection.

IBJKGRA4

Goldstein - Direct

1 THE COURT: Thank you.

2 I'm accepting into evidence Exhibits 911, 912, 913,
3 914, and 1225.

4 (Government's Exhibits 911 through 914 and 1225
5 received in evidence)

6 THE COURT: You can proceed.

7 MS. LONERGAN: Thank you, your Honor.

8 Mr. Hamilton, can we publish Government Exhibit 912.
9 I think it's two pages. Can we split it, so we can see both?

10 BY MS. LONERGAN:

11 Q. So, Mr. Goldstein, do you see in front of you what is in
12 evidence as Government Exhibit 912?

13 A. Yes.

14 Q. And these appear to be text messages. You said you
15 recognize them. Who are these text messages with?

16 A. It's between myself and Jona Rechnitz.

17 Q. There are two different colors of bubbles. There's gray
18 and blue. Who is you, and who is Mr. Rechnitz?

19 A. The light gray is Mr. Rechnitz, and then the blue is
20 myself.

21 Q. So, Mr. Goldstein, what I'd like to do is I'd like to read
22 this text message conversation. You can read your part, which
23 you said was blue, and I am going to read Mr. Rechnitz's part,
24 which are the gray, okay?

25 A. Yes.

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Goldstein - Direct

1 Q. And then I'll ask you some questions about it at the end.

2 I'm going to read the date. It says August 1st, 2013,
3 5:52 p.m.: "Tried you today. Need help. I want to prepay for
4 a hotel in Rome for a friend."

5 A. "My man, called you back. Calling you shortly."

6 Q. "August 15th and 16th, connecting rooms. Decent hotel in
7 Rome for a cop, August 15 through 17."

8 A. "Got it."

9 Q. "James Grant."

10 A. "Name of res?"

11 Q. "James Madia."

12 A. "Done. June is calling you to confirm."

13 Q. "Text me."

14 A. "Will do."

15 Q. And then August 5, 2013, 7:10 p.m.: "Rome."

16 And then August 8th, 2013, 8:18 a.m.

17 A. "Good morning. Got good news from Rome. Emailing around
18 noon today with the details."

19 Q. August 8th, 2013, 11:58 a.m.?

20 A. "Call me when you have a minute regarding room,
21 (718) 730-6009."

22 Q. Mr. Rechnitz wrote to you: "Decent hotel in Rome."

23 What type of hotel did you book?

24 A. A luxury hotel.

25 Q. Why did you book a luxury hotel?

IBJKGRA4

Goldstein - Direct

1 A. Those are the hotels that Mr. Rechnitz would like to book.

2 Q. On page 1, Mr. Rechnitz wrote "James Grant," and on page 2,
3 he wrote "James Madia." What name was the reservation in?

4 A. James Grant.

5 Q. Do you, sitting here today, have any firsthand knowledge of
6 who James Grant is?

7 A. I'm familiar from the press.

8 Q. Okay. So separate from anything you might have read, do
9 you have any knowledge, other than that, about who Mr. Grant
10 is?

11 A. Not really.

12 MS. LONERGAN: Mr. Hamilton, can we display what's in
13 evidence as Government Exhibit 914.

14 Q. Mr. Goldstein, in general, what are we looking at in
15 Government Exhibit 914?

16 A. I'm looking at a booking confirmation sent to Mr. Rechnitz
17 for the Hotel Regina Baglioni for James Grant.

18 Q. So let's --

19 MS. LONERGAN: Mr. Hamilton, can we zoom in on the top
20 of this document? Thank you.

21 Q. What's the date that this was sent?

22 A. August 8, 2013.

23 Q. Who sent it?

24 A. Luxury Connections.

25 Q. Is that you?

IBJKGRA4

Goldstein - Direct

1 A. Yes.

2 Q. And who was it sent to?

3 A. Jona Rechnitz.

4 Q. Can you read the subject?

5 A. "Thank you for your reservation at Hotel Regina Baglioni."

6 MS. LONERGAN: Let's scroll down to where it has the
7 guest information.

8 Q. What's the name of the guest?

9 A. James Grant.

10 Q. It says, "Grant James"?

11 A. It actually says "Grant James." It should have been James
12 Grant.

13 Q. What is the email address associated with this reservation?

14 A. Jona@jsrcap.com.

15 Q. Can we look at the credit card information. Who is the
16 cardholder?

17 A. Jona Rechnitz.

18 Q. Now let's look at the reservation information. What is the
19 name of the hotel?

20 A. Hotel Regina Baglioni.

21 Q. What is the date that you booked this?

22 A. On August 8, 2013.

23 Q. What are the dates of travel?

24 A. August 15th, 2013 - August 17, 2013.

25 Q. And that's for a total of how many nights?

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Goldstein - Direct

1 A. Two nights.

2 Q. What's the average nightly rate for that room?

3 A. \$533.

4 Q. And then what was the total charge?

5 A. \$1,066.

6 Q. I think this has been clear, but who was this reservation
7 for?

8 A. James Grant.

9 Q. And who paid?

10 A. Jona Rechnitz.

11 MS. LONERGAN: Mr. Hamilton, can we go to page 5.

12 Q. What are we looking at here, Mr. Goldstein?

13 A. This is a merchant receipt from the credit card that was
14 charged to Mr. Rechnitz.

15 Q. Does that mean that Mr. Rechnitz paid for this?

16 A. Yes.

17 MS. LONERGAN: Can we go to page 7 of this exhibit.

18 Q. What are we looking at on page 7?

19 A. Page 7 is an email from myself to Mr. Rechnitz: "Hope to
20 have Rome confirmed by tomorrow, my man."

21 And Mr. Rechnitz responded: "Thank you."

22 Q. What is the date of your email?

23 A. August 6th.

24 Q. 2013?

25 A. 2013.

IBJKGRA4

Goldstein - Direct

1 Q. Did you correspond with this hotel in Rome in connection
2 with the reservation?

3 A. Yes.

4 Q. How did you correspond with the hotel in Rome?

5 A. Via email and via phone.

6 Q. Do you know if anyone actually traveled to Rome and stayed
7 in the hotel?

8 A. The answer is yes, because, if not, the hotel would have
9 informed us that the guest didn't arrive, and they would have
10 credited our account for the value of the booking that we paid
11 there.

12 Q. Did that happen? Did you get a credit from the hotel?

13 A. We did not.

14 Q. Do you know, one way or the other, whether the person who
15 stayed in the hotel was James Grant?

16 A. I can't confirm that today.

17 Q. Do you have any knowledge if Mr. Grant paid the money back
18 to Mr. Rechnitz?

19 A. I don't know.

20 MS. LONERGAN: Mr. Hamilton, can we take this down and
21 display Government Exhibit 911. Let's zoom in on this a little
22 bit.

23 Q. Can you tell me the date of this reservation -- sorry, the
24 date that you sent the email, Mr. Goldstein?

25 A. June 5th, 2013.

IBJKGRA4

Goldstein - Direct

1 Q. And who is this email from?

2 A. Luxury Connections.

3 Q. And who is it to?

4 A. Addressed to Jona Rechnitz, Jona@jsrcap.com.

5 Q. What's the subject of this?

6 A. "Thank you for your reservation at Royalton."

7 Q. Let's go down to where it says guest information. What is
8 the guest's name here?

9 A. Laura Colon.

10 Q. What is the email address associated with this reservation?

11 A. Jona@jsrcap.com.

12 Q. And on the credit card information, who is the cardholder?

13 A. Jona Rechnitz.

14 Q. Now let's look at the reservation information. What is the
15 hotel name?

16 A. The Royalton.

17 Q. Do you know where that hotel is?

18 A. In Manhattan.

19 Q. What is the book date of this reservation?

20 A. June 5, 2013.

21 Q. What are the check-in and checkout dates?

22 A. Check-in is August 6, 2013, and checkout is --

23 Q. Sorry, is that -- let's try that again. I think it might
24 be June.

25 A. Oh, I'm sorry. My apologies.

IBJKGRA4

Goldstein - Direct

1 Q. That's fine.

2 A. It's been a long day.

3 June 8, 2013, and checkout is June 9, 2013.

4 Q. So is that one night?

5 A. That is one night.

6 Q. What is the rate of that room for one night?

7 A. \$2,149.51.

8 Q. So who was this reservation for?

9 A. Laura Colon.

10 Q. And who paid for it?

11 A. Jona Rechnitz.

12 MS. LONERGAN: Mr. Hamilton, can we go to page 5 of
13 this exhibit?

14 Q. Again, what are we looking at here, Mr. Goldstein?

15 A. This is the merchant receipt of the transaction of the
16 \$2,149.51 that was charged to Jona Rechnitz's credit card for
17 the Royalton Hotel booking reservation.

18 MS. LONERGAN: Can we bring up page 7 of this exhibit.
19 Can we display the screen, so we can actually look at pages 7
20 and 8.

21 Q. Mr. Goldstein, it says here that this email is a chain with
22 Eli Goldstein. Who is Eli Goldstein?

23 A. Eli is my brother. He works for me.

24 Q. I'm sorry?

25 A. Eli is my brother, and he works with me at Luxury

IBJKGRA4

Goldstein - Direct

1 Connections.

2 Q. I'm sorry for mispronouncing your brother's name.

3 A. No problem.

4 Q. There is an email, and I think the top email is from
5 Mr. Rechnitz to your brother. Can you read the date of that?

6 A. June 7, 2013.

7 Q. What's the subject of this?

8 A. "Penthouse A confirmation."

9 Q. What did Mr. Rechnitz write?

10 A. "Great. I forwarded it to Dave."

11 Q. Do you know who Dave is?

12 A. From what my recollection is, maybe --

13 Q. I don't want you to guess unless -- if you don't know,
14 that's fine.

15 A. Yeah, I'm not a hundred percent sure.

16 Q. Okay. Do you know why Mr. Rechnitz forwarded this email to
17 Dave?

18 A. I believe Dave had a relationship with the Laura of the
19 reservation, and the hotel required -- if you scroll down in
20 the email, the hotel required that if you're booking a
21 penthouse, you have to sign a contract, the actual guest
22 staying in the penthouse. So I believe Dave was somehow
23 affiliated with Laura, perhaps even the same last name,
24 according to my recollection, but I'm not a hundred percent
25 sure.

IBJKGRA4

Goldstein - Direct

1 Q. You said --

2 MS. LONERGAN: If you go forward down in the email.

3 Mr. Hamilton, let's do that, let's display pages 9 and 10.

4 A. Right.

5 Q. So let's look at the page 9, which is on the left. Is that
6 the contract you were discussing?

7 A. That's right.

8 MS. LONERGAN: We can take this down.

9 And, Mr. Hamilton, can we display Government Exhibit
10 1225.

11 Q. First, what is this email?

12 A. This email is the booking confirmation for the Royalton for
13 Laura Colon from our company to Jona Rechnitz. Jona
14 responding: "Thank you."

15 And then our company responding: "Hi, Jona. It is
16 our pleasure, and thank you for choosing Luxury Connections.
17 Wishing Ms. Colon a wonderful stay at the Royalton. Best,
18 Luxury Connections team."

19 Q. Do you know who Laura Colon is?

20 A. I don't.

21 Q. Do you have any knowledge of whether Laura Colon or anyone
22 else paid Mr. Rechnitz back for this reservation?

23 A. I do not.

24 MS. LONERGAN: One moment, your Honor?

25 THE COURT: That's fine. Please take your time.

IBJKGRA4

Goldstein - Cross

1 (Pause)

2 MS. LONERGAN: No further questions.

3 THE COURT: Thank you.

4 Counsel for Mr. Reichberg?

5 CROSS-EXAMINATION

6 BY MS. NECHELES:

7 Q. Good afternoon, sir.

8 A. Good afternoon.

9 Q. How do you know Mr. Rechnitz?

10 A. I know him for many years.

11 Q. Do you know him through a charitable organization that
12 you're involved with, Simon Wiesenthal Center?

13 A. I'm not so involved with that organization.

14 Q. But you would go on a fundraising trip with him?

15 A. I did.

16 Q. And Mr. Rechnitz was involved with that organization?

17 MS. LONERGAN: Objection; scope.

18 THE COURT: Thank you.

19 You can answer the question.

20 THE WITNESS: I went on a fundraising trip with
21 Mr. Rechnitz.

22 BY MS. NECHELES:

23 Q. Am I correct, sir, that you did a lot of business with
24 Mr. Rechnitz, he did a lot of business with you?

25 A. We've done business together.

IBJKGRA4

Goldstein - Cross

1 Q. Okay. But I said a lot of business. Correct?

2 A. The only business I've done with Mr. Rechnitz was hotel
3 bookings.

4 Q. Okay. But there were a lot of hotel bookings, right?

5 MS. LONERGAN: Objection, your Honor.

6 THE COURT: You can answer the question.

7 THE WITNESS: Yeah, there were definitely quite a few.

8 BY MS. NECHELES:

9 Q. Was he one of your better customers?

10 MS. LONERGAN: Objection, your Honor.

11 THE COURT: You can answer the question.

12 THE WITNESS: I value Mr. Rechnitz as a client.

13 Q. Okay. But I'm asking, was he one of your better customers
14 in terms of volume?

15 MS. LONERGAN: Objection, your Honor.

16 THE COURT: You can answer the question.

17 THE WITNESS: He was definitely up there, yeah.

18 Q. Okay. I just want to show you what has been marked as
19 Defense Exhibit JR-9461. I want to show you what has been
20 marked as that.

21 Do you recall responding to a subpoena from defense
22 counsel for -- asking you for documents?

23 A. Yes.

24 Q. I put in front of you some documents. Do you recognize
25 those to be the documents that were provided?

IBJKGRA4

Goldstein - Cross

1 A. I do.

2 Q. Am I correct that those are emails and invoices related to
3 Jona Rechnitz's travel from the years 2013 to 2016?

4 MS. LONERGAN: Objection, your Honor, for the same
5 reasons stated.

6 THE COURT: Thank you.

7 You can answer the question.

8 THE WITNESS: Well, the subpoena asked us to provide
9 documents for all the bookings for Mr. Rechnitz, so that's what
10 we provided. So I believe it was from 2013 until 2016, yes.

11 BY MS. NECHELES:

12 Q. Were those documents made in the ordinary course of
13 business?

14 A. Yes.

15 Q. And were they made on or about the time of the events
16 captured therein?

17 A. Yes.

18 Q. Were they kept in the ordinary course of business?

19 A. Yes.

20 Q. The emails there were sent in the ordinary course of
21 business as well?

22 A. Yes.

23 Q. And kept in the ordinary course of business as well?

24 A. Yes.

25 Q. Sir, am I correct that Mr. Rechnitz always stayed in luxury

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Goldstein - Cross

1 hotels? Is that what you testified?

2 A. I believe I was asked what a decent hotel meant, and I said
3 a decent hotel is a nice hotel. That's what Mr. Rechnitz was
4 accustomed to. So there are times where there were hotels in
5 the location, that there weren't such luxury hotels, so he
6 would stay in other hotels.

7 Q. "He would stay in other hotels," meaning what?

8 A. Instead of a five-star, maybe a four-star.

9 Q. But he liked to stay in the nicest hotel, correct?

10 A. He did.

11 Q. And, sir, I want to direct your attention to one of the
12 exhibits that was shown to you by the government, which was a
13 text that --

14 MS. NECHELES: Yes, if we could put that up.

15 Q. In this text, am I correct that he told you that he was
16 booking the room for a police officer? Right?

17 THE COURT: Referring to Exhibit 912.

18 MS. NECHELES: I'm sorry, your Honor.

19 BY MS. NECHELES:

20 Q. Referring to Exhibit 912 on your screen, he told you he was
21 booking the room for a police officer?

22 A. Yes. He said for a cop, yep.

23 Q. He didn't tell you to keep that a secret, did he?

24 A. No.

25 Q. And sometimes -- am I correct that sometimes you would go

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Goldstein - Cross

1 smoke cigars with Mr. Rechnitz?

2 MS. LONERGAN: Objection, your Honor; scope.

3 THE COURT: You can answer the question.

4 THE WITNESS: I had cigars with Mr. Rechnitz, yes.

5 BY MS. NECHELES:

6 Q. You would go to a place called the Grand Havana Club?

7 MS. LONERGAN: Objection; scope.

8 THE COURT: Thank you.

9 You can answer the question.

10 THE WITNESS: I've been to the Grand Havana Club

11 having cigars.

12 Q. With Mr. Rechnitz?

13 A. It's possible on one occasion.

14 Q. And there were police officers there as well with
15 Mr. Rechnitz?

16 A. In the Grand Havana? Nope.

17 Q. Did you go other places with him where he was smoking
18 cigars with police officers there?

19 A. Yes.

20 Q. Where was that?

21 A. It was in a rooftop at the Prime Bentley.

22 Q. That was a public place?

23 A. Yes.

24 Q. He didn't keep it a secret, did he?

25 A. He did not.

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Goldstein - Cross

1 Q. And, sir, I want to direct your attention to what the
2 government showed you as Government Exhibit 914. That was an
3 invoice that you prepared, and it said "Dear Mr. Grant" on it,
4 correct?

5 A. Correct.

6 Q. But you sent it to Mr. Rechnitz, right?

7 A. Correct.

8 Q. You did not send that to Mr. Grant, did you?

9 A. No.

10 Q. And that was how it always worked, you would send it to
11 Mr. Rechnitz, right?

12 A. If Mr. Rechnitz made a booking, the email confirmation
13 would go to Mr. Rechnitz.

14 Q. Okay. If you look at that, and the government highlighted,
15 it has on it the price of that room, right?

16 A. Exhibit 914?

17 Q. Yes.

18 MS. NECHELES: Can you make it larger?

19 A. Yeah, the price is 1,066.

20 Q. Okay. And that is how your invoices always looked, right?

21 A. Yeah.

22 Q. Did you ever send an invoice that did not have the price on
23 it?

24 A. I don't recall.

25 Q. But it was your custom to send invoices like this, with the

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Goldstein - Cross

1 price, right? This was the format of your invoices, right?

2 A. Correct, this was the format of my invoices.

3 MS. NECHELES: If we could take that down, and if we
4 could put up, just for the witness and the government -- or for
5 the government and the Court for a moment, if we could,
6 Government Exhibit 1085.

7 And, your Honor, I would offer this pursuant to a
8 stipulation between the government and the defense, and the
9 stipulation is Government Exhibit 1701.

10 THE COURT: Thank you.

11 Counsel for the United States?

12 MS. LONERGAN: Your Honor, may we approach?

13 THE COURT: Please do. Come on up.

14 (Continued on next page)

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Goldstein - Cross

1 (At the sidebar)

2 THE COURT: I'm sorry. Counsel for the United States,
3 go ahead. What's the concern?

4 MS. LONERGAN: Your Honor, hearsay. It's a statement
5 of --

6 THE COURT: I'm sorry. Can you first give me the
7 context? What is this document?

8 MS. LONERGAN: This document appears to be an email
9 from Mr. Rechnitz to someone else, I'm not sure who.

10 MS. NECHELES: It's Jimmy Grant.

11 MS. RAVENER: Your Honor, it's a statement made in
12 furtherance of the conspiracy by Mr. Rechnitz. We expect to
13 offer it in our case. They cannot offer statements in
14 furtherance of the conspiracy. This issue has come up before.
15 That's why we're raising the objection now. As a technical
16 matter, the defense cannot admit it.

17 MS. NECHELES: Judge, I'm not putting it in for its
18 truth. What he does is Mr. Rechnitz takes the invoice, he
19 takes off the price, he takes off his credit card information,
20 and then he forwards it to Mr. Grant, so that it appears that
21 it was a free room. I'm just putting it in to show what he
22 forwarded and the change that he made. It's not for the truth
23 of anything said therein.

24 THE COURT: Thank you. Understood.

25 I'm going to sustain the objection. I understand this

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Goldstein - Cross

1 evidence is going to come in, and you will be able to draw the
2 line that you're discussing. The technical issue that the
3 government is referencing, though, I think is correct.

4 MS. NECHELES: No, I think it's absolutely wrong, your
5 Honor. I think I am entitled to put this in. There is nothing
6 in here for the truth of what's said. He has forwarded an
7 invoice. He is not saying I am doing this or I am -- he is
8 merely forwarding an invoice, and that is not being put in for
9 the truth of it.

10 THE COURT: Thank you.

11 MS. NECHELES: And, your Honor, I just want -- the
12 problem is that Mr. Rechnitz is going to go on for days, and I
13 want the jury to be able to focus on this and not get lost in
14 all the other stuff. This is an important thing. They claim
15 that this is a bribe to Mr. Grant, and what he did was he took
16 the price off. This is a man that there will be testimony who
17 lied to people that he owned hotels, and that he had a pattern
18 of doing this. It's critical to this case. It's the heart of
19 this case. It's one of the bribes. And to show the difference
20 between the invoices that this person and what was done here --
21 and I want this person, this witness, to be able to say, that
22 was not the way I sent that invoice, that was not what my
23 invoice looked like. And I won't be able to do that later if I
24 can't show him the invoice.

25 THE COURT: Thank you.

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Goldstein - Cross

1 MR. BELL: Judge, we do, as your Honor noted, intend
2 to get that in. Ms. Necheles' argument sounds like a component
3 of her dynamite argument to the jury, but we do intend to get
4 that in, and if things go smoothly with Mr. Rechnitz, we intend
5 to get that in on the earlier side of things.

6 THE COURT: Thank you.

7 MR. BELL: But I think -- but we take your Honor's
8 point, and there are, I think, technical limits as to what they
9 can do here.

10 THE COURT: Counsel, I understand the additional point
11 that you want to get out, Ms. Necheles; namely, that this is
12 not his document.

13 MS. NECHELES: It was altered. He never sent it out
14 that way.

15 THE COURT: I think that -- is it correct, rather,
16 that this witness has not seen the document that you're
17 referring to?

18 MS. NECHELES: No, but it's been stipulated by the
19 government that it is what it is.

20 THE COURT: Oh, I understand.

21 MS. NECHELES: It's an email from -- so the only
22 question now is whether I can put it in evidence, and then show
23 it to the witness and say this is not -- now, certainly it's
24 all the foundational requirements are there. The only question
25 is, am I putting it in for the truth of it. And I am not. I'm

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Goldstein - Cross

1 putting it in to show how it was changed. There's no --

2 THE COURT: Thank you.

3 Can I see the record?

4 MS. NECHELES: Yes.

5 MR. BELL: Your Honor, while we're waiting --

6 MS. NECHELES: Your Honor, I don't have a hard copy.

7 It's on the screen.

8 MS. RAVENER: Your Honor, I think on opportunity --
9 one moment, your Honor?

10 (Pause)

11 THE COURT: Go ahead. Sorry.

12 MS. NECHELES: So, your Honor, the only statement by
13 Mr. Rechnitz in there is most luxurious hotel in Rome. That's
14 a lie. I'm going -- I will show that it's not the most
15 luxurious. He asked for a decent room. But I don't care, I
16 can redact that for now, and just show the bottom part because
17 that's all I'm really interested in. I would think that the
18 government wouldn't want me to redact it because it makes the
19 exhibit look a little bit misleading, but I'm not putting any
20 of this in for the truth of it.

21 THE COURT: Thank you.

22 To be clear, I would have no problem, Ms. Necheles,
23 with you asking the witness if he has seen this document
24 before, is this your invoice, without necessarily
25 introducing --

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Goldstein - Cross

1 MS. NECHELES: And the jury can see it, Judge.

2 THE COURT: The question is just that, and
3 Ms. Necheles has suggested that she redact the one statement in
4 the email that she asserts is hearsay.

5 Counsel for the government, what's your view?

6 MS. LONERGAN: Your Honor, simply forwarding an email
7 from Mr. Rechnitz to Mr. Grant is also a statement in
8 furtherance of the conspiracy. I mean, he's writing --
9 essentially writing something to Mr. Grant.

10 THE COURT: Why is it for the truth?

11 MS. RAVENER: It's for the truth, your Honor, that the
12 hotel was booked for him, for Mr. Grant.

13 MS. NECHELES: It's --

14 MR. BELL: The information embedded in the lower parts
15 of the invoice are still coming in. Separate and apart from
16 the alterations, the real way to just get in the alterations
17 through this witness, and I'm not sure there is, then we'd be
18 speaking about something entirely different. I take
19 Ms. Necheles' frustrations about not being able to throw this
20 out there first, but the fact of the matter is that it is
21 clearly in furtherance of the conspiracy. Our mobility under
22 the rules -- under the rules of evidence is different in that
23 sense. We're going to introduce this, and Ms. Necheles is
24 going to have every opportunity to argue from it before the
25 same jury that she wants to see this.

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Goldstein - Cross

1 MS. NECHELES: Judge, they don't get to choose how I
2 try my case.

3 MR. BELL: You are putting on --

4 MS. NECHELES: I get to do my case in there because
5 that's what the rules of evidence are. I get to cross-examine,
6 and I get to bring out of witnesses that they have called to
7 show how things get altered, things that are important to us.
8 This is the bribe.

9 THE COURT: Thank you.

10 MR. BELL: Ms. Necheles can ask --

11 THE COURT: I'm sorry for interrupting. I'm going to
12 sustain the government's objection in part. I don't see a
13 basis to bring in with this witnesses as of this time this as
14 direct evidence, but I do understand why it is, Ms. Necheles,
15 that you want to make a record that this document that he is
16 looking at is not his document; in other words, that this
17 exhibit is not his record. I don't mind you asking that
18 question.

19 MS. NECHELES: But I need the jury to see that. I
20 need the evidence in front of the jury that this is not his
21 document. I really think that this is really wrong, to not --
22 it's really erroneous not to permit the witness, for us, to be
23 able to cross-examine the witness that they called in a way to
24 show that he does not create the kind of documents -- he did
25 not create the document that gets sent to Jimmy Grant, because

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Goldstein - Cross

1 I don't know what happens later. And this witness is here
2 right now, and the jury should be able to see them because this
3 is critical to the defense of our case. There is no rule that
4 does not permit me to do this. This is not hearsay. I am not
5 putting that invoice in for the truth of it. They put that
6 invoice in. I'm only putting it in to show the changes that
7 were made, and that is not a statement. That is an action. To
8 be able to show that this is not his document -- because who
9 knows what Jona Rechnitz will say later? Who knows what he
10 will say because I do not know --

11 MR. BELL: I do.

12 MS. NECHELES: I'm not relying on the government, as I
13 should not have to rely on the government, to try my case or to
14 permit me to do something, as they keep saying, we're
15 permitting her to do this on cross. They don't permit me to do
16 anything, Judge. I have never heard prosecutors repeatedly say
17 that. They don't set the rules of evidence. I'm allowed --
18 this is his constitutional right, for us to be able to
19 cross-examine on exactly this kind of thing, your Honor. This
20 goes to the heart of the case, to show that this person, Jimmy
21 Grant, did not believe that this was an expensive fancy thing,
22 that he did not believe -- he believed that this was a hotel
23 that Jona owned, and that was how Jona held himself out. You
24 will hear testimony from --

25 MS. RAVENER: Your Honor --

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Goldstein - Cross

1 MS. NECHELES: -- Jona that he did this repeatedly.

2 MR. BELL: Judge, may we? Because that was wrong.

3 THE COURT: I think I've heard enough. I'm going to
4 stay with my prior decision. I think that the defense will be
5 able to establish through this witness that the document is not
6 his document, and, as I understand it, all of the facts that
7 you've just described have come out or will come out during the
8 course of Mr. Rechnitz's examination. The government has
9 proffered and assured us that this record will come in, so the
10 opportunity to establish that the argument that you're
11 describing, Ms. Necheles, will be presented. The question is
12 just can you highlight it through this witness.

13 MS. NECHELES: But, your Honor, what I'm saying to you
14 is in the first place, the jury can't follow, they can't see --
15 it's so confusing. But beyond that, what I'm saying, also, is
16 the government has put in all sorts of pictures. They've put
17 in pictures of people who are on the stand, they put in all
18 sorts of documents, they will be putting in -- so to deprive
19 the defense of the ability to show the jury the critical
20 documents in the case, the critical documents that the
21 government will stand up in summation and say, it was a bribe,
22 to be deprive the defense of the opportunity to show it to the
23 jury and let them understand what's going on here, because
24 people understand better if they can see what we're talking
25 about, see how it's changed, look at one next to the other. I

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Goldstein - Cross

1 don't understand why I should not be able to ask that at this
2 point, because this is the witness who will say, no, I never
3 created a document like that. If I can't show it to him -- if
4 I can't ask that and show it to him, the jury will never know
5 that.

6 THE COURT: Thank you.

7 You are going to ask him that question and show it to
8 him. The question is whether you introduce it into evidence at
9 this time, and that's the only question that I'm responding to.

10 MS. NECHELES: So he's going to testify about a
11 document that's not in evidence? Is that what you're going to
12 allow me to do, ask him lots of questions about what it says
13 and what it doesn't say when the document is not in evidence?

14 THE COURT: No. I understand that you're going to ask
15 him whether or not this document is one of his invoices.

16 MS. NECHELES: No, it is his invoice. It gets
17 changed. He changes his -- I need to show that -- I need to go
18 to the specifics in that invoice.

19 THE COURT: Okay. We're going to take a break. This
20 is very --

21 (Continued on next page)

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Goldstein - Cross

1 (In open court)

2 THE COURT: Ladies and gentlemen, we're going to take
3 a short recess. Please don't discuss the case amongst
4 yourselves during this break, don't do any research about it,
5 and don't communicate with anyone else about the case.

6 With that, I'll bring you back shortly.

7 (Continued on next page)

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Goldstein - Cross

1 (Jury not present)

2 THE COURT: Thank you. You can be seated.

3 So, Mr. Goldstein, I ask you to step down briefly.

4 We're going to have a short conversation. If you can step out
5 for a moment.

6 THE WITNESS: Sure.

7 THE COURT: And during this break, please don't
8 discuss the substance of your testimony or any issue here with
9 anyone. I expect to bring you back in a short moment.

10 THE WITNESS: Sure.

11 MR. MERINGOLO: Judge, I'm going to run to the
12 bathroom.

13 THE COURT: That's fine. Thank you. Ms. Cappellino
14 is present.

15 So, as the witness is making his way out, I'd like to
16 hear further argument on this issue. My strong desire, to the
17 extent I haven't communicated it previously, is for the parties
18 to try to raise issues with the Court outside of the presence
19 of the jury that we may be able to discuss, so that we don't
20 take the jury's time. This is an issue that resulted in a
21 substantial colloquy at sidebar, which is why I excused the
22 jury, so that we can take more time to discuss the issue
23 without obviously wasting the jury's time as opposed to simply
24 not using it wisely.

25 MS. NECHELES: Judge, I actually am surprised by this

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Goldstein - Cross

1 objection, because I think it's clearly wrong --

2 THE COURT: I'm sorry, give me one moment.

3 (Pause)

4 THE COURT: I now have a copy of the email in front of
5 me. Give me a moment, please, while I read it.

6 (Pause)

7 MS. NECHELES: Your Honor, are you looking at
8 Government Exhibit 1085?

9 THE COURT: I am now.

10 MS. NECHELES: Can I pass up 1227, also, so you can
11 see what the government did put in evidence?

12 THE COURT: Please.

13 (Pause)

14 MS. NECHELES: Your Honor, I will seek --

15 THE COURT: I'm sorry, give me one more moment.

16 MS. NECHELES: Yes.

17 (Pause)

18 THE COURT: Thank you.

19 So, counsel for the United States, I've now had the
20 opportunity to review the exhibit that the defense is referring
21 to. What is the hearsay objection with respect to this? Apart
22 from the statement that this is the most luxurious hotel in
23 Rome, what here is it that you assert is hearsay?

24 MS. LONERGAN: One moment, your Honor?

25 THE COURT: Thank you. I understand the purpose of

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Goldstein - Cross

1 this is simply to show what appears to be a modification to the
2 forwarded invoice from Luxury Connections, which takes out
3 certain information, including the charge.

4 MR. BELL: Your Honor -- and forgive us because I
5 don't know that you're going to hear much that we didn't try to
6 explain at sidebar -- the bottom part of the statement is a
7 booking reference. It is a statement that represents, on its
8 face, that a certain booking was made by Mr. Rechnitz in the
9 name of Mr. Grant James, and that remains the case as
10 forwarded. The truth here is that it is essentially the truth
11 of the booking, as would be the case for any such document.
12 When you have a business record, and you put the business
13 record in, if you don't clear the business exception rules'
14 hurdles --

15 THE COURT: I'm sorry, can I just pause you?

16 MR. BELL: Sure.

17 THE COURT: Is it right that 1085 is subject to a
18 stipulation that does that?

19 MR. BELL: As to authenticity.

20 THE COURT: Thank you. But not as to --

21 MR. BELL: Not as to admissibility.

22 THE COURT: But not also as to business records
23 exception?

24 MR. BELL: No, your Honor.

25 (Continued on next page)

IBJTGRA5

1 MS. NECHELES: Your Honor, could I comment on that?
2 If this witness had handed this document to Mr. Grant, I could
3 elicit: Did you hand this document to Mr. Grant, and is this
4 the document that you handed to him? It's conduct, it's not a
5 statement that I'm eliciting. He emailed it. It's not that --
6 it was emailed.

7 So I don't need Jona Rechnitz to testify that it's a
8 business record. It's not a business record. He's just -- all
9 he's doing by sending this is the same as handing it. I could
10 get someone to testify he handed it. The government has
11 essentially stipulated that Mr. -- and they have stipulated
12 that Mr. Rechnitz emailed this to Mr. Grant. So that
13 stipulation is done. The only question is: Is there something
14 in what he handed or emailed that makes it a statement? The
15 fact that you hand a document to someone doesn't make the
16 document that you hand to them a statement. Just like here,
17 the fact that he emailed it doesn't make what he emailed to
18 Mr. Grant a statement.

19 MR. BELL: I want to be clear, your Honor, we weren't
20 putting -- my allusion to a business record before wasn't to
21 suggest this is a business record, merely to point out to your
22 Honor's earlier question what the statement being put in as it
23 fits into the hearsay dimension that's been raised.

24 I will note just on the broader point that
25 Ms. Necheles raised, we're not trying to bar her from doing

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1 anything, we don't -- we're not responsible for the rules of
2 evidence, they are what they are, we're merely trying to get
3 this in in a fashion that complies with them.

4 THE COURT: Could I pause you again? With respect to
5 the statement, what is it that the government asserts is
6 hearsay here? Mr. Rechnitz is not -- it's not clear do me what
7 it is Mr. Rechnitz here is saying other than the most luxurious
8 hotel in Rome. I think what Ms. Necheles is arguing is this is
9 about what Mr. Rechnitz did, namely deleting words from the
10 invoice that was originally presented.

11 MR. BELL: So in effect, your Honor, Ms. Necheles is
12 looking to offer this in as a statement of Mr. -- there are a
13 couple of things here.

14 If it were only a matter of putting in the alteration
15 itself, as I said at sidebar, your Honor, that would seem to be
16 a different thing, but it's still the entirety of the statement
17 that's coming in. And it's a statement -- the statement is
18 effectively: This reservation has been made. I made this
19 reservation for you. That's what this is. That is the truth
20 behind the statement of the email. I'm not sure that there is
21 another way to communicate that clearly.

22 But that is effectively what invoices are, what
23 confirmations are, they are statements. And the question is:
24 Well, okay, is that statement being offered for the truth or is
25 it not? I think that if there were some way to limit this

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1 exclusively to the --

2 THE COURT: I'm sorry, I don't understand the
3 government's point on this. The fact of the making of the
4 reservation is established in 1227, so I understand that fact
5 to have been at least, if not established, supported by 1227.
6 So the distinction between 1085 and 1227 is the redaction of
7 the charging information.

8 MR. BELL: I take it from what your Honor is
9 suggesting that if Ms. Necheles were to have -- if these were
10 put in in a different order then the hearsay ramifications
11 would be different. I respectfully would disagree with this.
12 The documents either individually come in --

13 THE COURT: Just to be clear, I don't see what the
14 hearsay statement is in the email itself.

15 MS. LONERGAN: Your Honor, quickly, if I may, 1227 is
16 an email to Mr. Rechnitz with the reservation. This email,
17 however, is a separate statement to Mr. Rechnitz saying to
18 Mr. Grant I made this reservation for you, essentially. It's a
19 separate statement. It's separate from the statement that's
20 in -- 1227 is a business record of -- is a record of
21 Mr. Rechnitz actually booking the hotel for Grant, but it is
22 separate, the fact that Mr. Rechnitz then tells Mr. Grant I
23 made this reservation for you, which is what he's doing by
24 forwarding it to him.

25 MR. BELL: She effectively wants to put in the

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1 statement to Jimmy Grant that the hotel had no price.

2 MS. NECHELES: No, that's not --

3 MR. BELL: Or rather she wants to put that statement
4 in so as to refute it.

5 I think that your Honor's original ruling was correct,
6 it's going to come in anyway. And I certainly appreciate
7 Ms. Necheles' zealous advocacy, but I don't think that these
8 are concerns that we can sort of blow through through sheer
9 tyranny of will here.

10 MS. NECHELES: Your Honor, if we went with the
11 government's theory, it's an action. And yes, some actions
12 could be interpreted as a statement, but it's an action, it's
13 an email. But if we went with the government's theory, that
14 would mean I can't ever put this in, even if they decide not
15 to.

16 If they decide to withhold this from the jury, what
17 they are saying is we wouldn't be able to put it in because
18 it's hearsay by us. That's just not right. I don't understand
19 it. If they're saying they're going to put it in, why
20 shouldn't we put it in now, and it's relevant now, it goes to
21 this witness's testimony. I need him to say: I never did
22 this, that is not my invoice, it was changed, I never sent that
23 invoice.

24 It is -- there is no statement, it is not a -- yes,
25 many actions can be interpreted as statements. By smacking

IBJTGRA5

1 Mr. Meringolo, I'm sort of making a statement that I'm mad at
2 him, but that doesn't mean it's not admissible. Many actions
3 come in all the time. That's what you do in a trial. This is
4 an action by Mr. Rechnitz. He sends a text or invoice to
5 Mr. Grant. The government was planning on putting it in. What
6 if they decide: I don't want to. Oh, my goodness, this is not
7 good for me so I'm not going to put it in. I'm the government,
8 I'm not putting it in.

9 It can't possibly be true under the rules of evidence
10 that Mr. Grant cannot show that Mr. Rechnitz changed this and
11 that he sent it to -- that this was sent to Mr. Grant. And it
12 comes in, your Honor, as an exhibit. It's just that's all it
13 is. It's not a statement by him, it's just an action. He
14 emailed it, and the government stipulated to that action. They
15 said yes, this is from the email, it's an authentic document
16 that was sent to Mr. Grant.

17 So I don't understand -- that part of it they have
18 already stipulated to. So to the extent that they say that's a
19 statement, they already stipulated to that statement. They put
20 it into the stipulation, yes, this is an authentic document, it
21 was sent.

22 So the heart of the case, your Honor, they just don't
23 want me to be able to cross-examine this witness and to show
24 the jury methodically: Look at how this was changed. It is
25 the heart of the case, it is the so-called bribe to Mr. Grant,

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1 and we should be able to explore that issue with the jury. I
2 don't understand why the government would be trying to stop
3 that.

4 MR. BELL: Judge, co-conspirator statements as a
5 general matter can be called the heart of any conspirator case
6 with the same passion and with the same propriety that
7 Ms. Necheles just displayed. At the same time, to extend the
8 logic behind Ms. Necheles' argument would vitiate the rule that
9 bars you from putting in co-conspirator statements on the
10 defense side.

11 THE COURT: Thank you. Let me ask, Ms. Necheles, with
12 respect to the substantive issue, namely your desire to show
13 the witness the modified invoice, counsel for the United
14 States, and I believe you as well, suggested earlier deleting
15 the statement, i.e., the most luxurious hotel in Rome. Have
16 the parties considered redacting the entirety of the forwarding
17 email and just presenting this witness with a modified invoice?

18 MS. NECHELES: Your Honor, I want to show that it was
19 forwarded from Rechnitz to Mr. Grant. That's the heart of
20 this. The exhibit is what it is. But it just can't be
21 something floating out there. It goes from Mr. Rechnitz.
22 That's the document. That's the action.

23 MR. BELL: If it's contingent on that, your Honor, it
24 goes to highlight the issues with having to put this in on
25 cross-examination through this witness who is unfamiliar with

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1 the forwarded part.

2 Ms. Necheles, to be clear, can ask questions about the
3 document. She can say loudly and clearly and for the record
4 Government Exhibit 1085, as marked for identification, and then
5 connect the dots later on. That's what closing argument is
6 for.

7 THE COURT: Thank you. Counsel for the United States
8 and counsel for the defense, have you considered or should I --
9 I should say counsel for the defense, have you considered
10 creating a defense exhibit which is just the forwarded message?

11 MS. NECHELES: I don't know what you mean by just
12 that, your Honor. If I took out the most luxurious hotel in
13 Rome, wouldn't that just be the forwarded message?

14 THE COURT: No, the heading, i.e., to not do what the
15 government is asserting is --

16 MS. NECHELES: Your Honor, what if the government
17 decides on their case that they don't want to put this in? Do
18 I not get to put this in?

19 THE COURT: I think that's the government's going
20 concern.

21 MS. NECHELES: That's the question that your Honor is
22 faced with. Is it really possible that I don't get to show
23 that what Rechnitz gave to Jimmy Grant was something that he
24 had taken that made it look like it was a free room?

25 If that's the bribe, do I not get to show that because

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1 the government claims that's a statement? I'm not putting that
2 statement in for the truth of it that it was a free room, I'm
3 putting it in to show what was said to Jimmy Grant, what was
4 given to Jimmy Grant, and that seems to be the heart of it.
5 It's not the truth of what was said, but the fact that it was
6 said. This is what was given to him.

7 I really don't understand. If I took off the top,
8 would I not -- under the government's logic, I could never put
9 this in, and government would not put it in because now they
10 see where I'm going. Why would that be right in a case where
11 we're charged with this was what was given as a bribe to
12 Mr. Grant? Don't I get to show that what was sent to Mr. Grant
13 about the invoice was basically a free room?

14 Now the government can argue that it means something
15 else, they could have Mr. Rechnitz testify it means something
16 else, but I need the jury to see what was he was told. And
17 especially because there will be lots of testimony that
18 Mr. Rechnitz changes other documents and tells other people
19 that they're getting a free room, pretends to own hotels. This
20 is critical to the case. And it's not unfair to the government
21 in any way. They're not saying it's unfair. They're not
22 saying there's anything wrong with this other than they don't
23 want me to put my defense in.

24 MR. BELL: Speaking as somebody who actually can speak
25 on behalf of the government on what they're going to put in, we

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1 hear Ms. Necheles. We're not scared. Believe me, we're
2 putting this in.

3 What I could say, your Honor, is that I think that
4 your Honor, in identifying the issues that you have with
5 respect to whether the defense has considered the redactions
6 that they have, has I think appreciated why this isn't properly
7 before this witness in this form right now. I think it could
8 be shown to this witness. I think the witness could be asked
9 about it subject to connection, and Ms. Necheles, who is very,
10 very skilled at this, can connect the dots later on. But
11 extending the logic that Ms. Necheles is advancing right now
12 would basically mean that Ms. Necheles -- that any defense
13 counsel could put in any co-conspirator statement any time they
14 like on the theory that the government might decide they don't
15 want to do it. That's not how it works.

16 MS. NECHELES: Of course that's not what I'm arguing.
17 I'm arguing it's not going in for the truth. This is not a
18 truthful statement. I am putting it in to show he lied to
19 Mr. Grant.

20 THE COURT: Thank you. Understood. I didn't
21 understand that this witness has any knowledge of what
22 Mr. Rechnitz did or didn't do. I'm happy to allow the defense
23 to inquire regarding the, I will call it the substance of the
24 forwarded invoice, which appears to have been modified. I
25 think that the government's objection to the introduction of

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1 the entirety of the exhibit at this time, however, is well
2 founded.

3 To the extent counsel for defense, if you would like
4 to have a graphic illustration to show the jury to illustrate
5 these modifications now, separate and apart from establishing
6 that these were sent by Mr. Rechnitz, a topic about which this
7 witness, as I understand it, has no particular knowledge, you
8 could create a separate exhibit which consists solely -- or you
9 might consider creating a separate exhibit which consists
10 solely of the underlying document within 1085, in other words,
11 the forwarded email.

12 I take no position on how you wish to approach that.
13 Again, as I said at sidebar, I have no concerns about you
14 asking questions about the substance of the modifications, the
15 question is whether you can establish through this witness that
16 Mr. Rechnitz communicated this to Mr. Grant, a topic about
17 which this witness has no personal knowledge, and as with
18 respect to which the government has raised reasoned objections.

19 MS. NECHELES: Your Honor, I will do that if that's
20 what your Honor is permitting me to do, but I will just note
21 when I was putting it in before, it was a document that had
22 been stipulated to by the government because it was part of an
23 email, so I would seek to be able to still put it in under that
24 stipulation. Because that's what it is, it's part of that
25 email, and I need to question this witness. And the reason we

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1 entered into these stipulations was to allow each side to be
2 able to use these documents.

3 The stipulation, your Honor, to be clear, identifies
4 everything that was taken off of these computers and says that
5 everything that was taken off is authentic. And then it
6 identifies a few exhibits as either defense exhibits or
7 government exhibits, but the agreement with the government was
8 that we could at a later date use anything if it became a part
9 of -- relevant to the trial. We could use anything that was in
10 that database that had been stipulated as coming from that
11 computer, and this came from that computer.

12 MS. LONERGAN: Your Honor, I just want to be very
13 clear about the stipulation. Ms. Necheles is correct that the
14 stipulation does read that the entire emails are authentic. We
15 did that to save everyone a lot of time calling custodians.
16 The stipulation, however, does not say that anybody can use
17 whatever they want, they say there are other hearsay
18 objections, there are many other objections. Essentially what
19 the stipulation does is just get rid of the issue of
20 authenticity. I think that was very clear in the way the
21 stipulations are drafted. That was something that both parties
22 in fact wanted. Both parties wanted to be able to continue to
23 raise other objections.

24 So we agree -- look, we agree that the bottom half of
25 this email is authentic. We're not going to object on

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1 authenticity grounds. I think that's the point. But I wanted
2 to set the record straight as to what the stipulation does and
3 doesn't do. It doesn't say any party can use anything for any
4 purpose.

5 THE COURT: Understood. From a practical perspective,
6 there are two possibilities here, either the defense could
7 propose a -- I'll call it separate exhibit which consists of
8 the subsection of Government Exhibit 1085 that you expect to
9 question the witness about. An alternative might be to show a
10 redacted version of Government Exhibit 1085. From a practical
11 perspective, I'm not sure which would be most efficient to help
12 us get some more work done during the course of trial day.

13 MS. NECHELES: Your Honor, I have made an exhibit,
14 9463. We can show that on the screen right now. We created
15 that, and I can refer to it as a redacted version of Government
16 Exhibit 1085, offered by stipulation.

17 THE COURT: Thank you. Counsel, for the United
18 States, do you have a concern about that?

19 MR. BELL: That seems fine, your Honor. We won't
20 object on authenticity grounds because it's grandfathered in by
21 the stip. Totally fine.

22 THE COURT: Thank you. I appreciate that. And I
23 understand, Mr. Necheles, you will only be asking questions
24 about this portion of the document --

25 MS. NECHELES: Yes.

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1 THE COURT: -- and the connection will happen properly
2 during Mr. Rechnitz's testimony.

3 MS. NECHELES: Yes, your Honor.

4 THE COURT: Good. Anything else that we should take
5 up before we bring the jury in?

6 MR. BELL: No, your Honor, we're good.

7 THE COURT: Ms. Necheles?

8 MS. NECHELES: I'm fine. Thank you, your Honor.

9 THE COURT: Mr. Grant?

10 MR. MERINGOLO: No, your Honor.

11 THE COURT: Thank you. Please bring the jury back in.

12 (Continued on next page)

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Goldstein - Cross

1 (Jury present)

2 THE COURT: Thank you, ladies and gentlemen, for your
3 patience.

4 Ms. Necheles, you can proceed.

5 MS. NECHELES: Thank you, your Honor.

6 Your Honor, at this time I offer in evidence
7 Defendant's Exhibit JR9463, which I offer, which is a redacted
8 version of Government Exhibit 1227. I offer it pursuant to --
9 sorry, redacted version of Government Exhibit 1085, and I offer
10 it pursuant to the stipulation which is marked Government
11 Exhibit 1701.

12 THE COURT: Thank you. Counsel?

13 MS. LONERGAN: No objection, your Honor.

14 MR. MERINGOLO: No objection.

15 THE COURT: Thank you. I'm accepting JR9463 into
16 evidence.

17 (Defendant's Exhibit JR9463 received in evidence)

18 THE COURT: Counsel, you may proceed.

19 MS. NECHELES: If I put up two documents, JR9463 and
20 Government Exhibit 1227.

21 THE COURT: You may. Please proceed.

22 MS. NECHELES: Thank you.

23 BY MS. NECHELES:

24 Q. Sir, if you look on the right-hand side of your screen,
25 that is Government Exhibit 1227 which you testified about on

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Goldstein - Cross

1 direct examination. Do you recall that?

2 A. I do.

3 Q. And that was a business record of yours, right?

4 A. Yes.

5 Q. And so I want to look at that and look at JR9463.

6 So on the right-hand side there's that black box which
7 has Luxury Connections LC, Luxury Connections in the middle of
8 it, correct?

9 A. Yes.

10 Q. And you see on the left-hand side it's actually red,
11 correct?

12 A. Correct.

13 Q. That's the real color it's in?

14 A. Red is the original, and I guess that was provided in
15 original format, and the black backsplash is the copy.

16 Q. And right underneath that it has reservation confirmation
17 5102900, right?

18 A. Yes.

19 Q. And that's the same on both documents, right?

20 A. Yes.

21 Q. And then you see that there's a Dear Mr. Grant and a
22 paragraph that's the same on both documents, right?

23 A. Yes.

24 Q. And then right underneath that --

25 MS. NECHELES: If you could highlight, Mr. Willis,

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Goldstein - Cross

1 just on Government Exhibit 1227.

2 Q. -- there is a box or a block that's guest information
3 credit card information.

4 Do you see that on Government Exhibit 1227?

5 A. I do.

6 Q. And that is missing from Defendant's Exhibit JR9463, right?

7 A. Correct.

8 Q. And then if you look underneath that block, on the
9 right-hand side there's a column charged, U.S. \$1,066, right?

10 A. Yes.

11 Q. And at the bottom it says total charge \$1,066, right?

12 A. Correct.

13 Q. And that is missing -- that is contained on Government
14 Exhibit 1227, right?

15 A. Yes.

16 Q. And it's missing from JR9463, right?

17 A. Yes.

18 Q. But if you look at what's on the left-hand side, it's
19 exactly the same as what is in your invoice from Government
20 Exhibit 1227, right?

21 A. Yes.

22 Q. And then -- and it's missing, am I correct that it is
23 missing also the -- one second.

24 It's also on Government Exhibit 1227, on what is not
25 highlighted there, there's a little line that says average

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Goldstein - Cross

1 nightly rate.

2 MS. NECHELES: If you highlight that, Mr. Willis.

3 Q. It says \$533?

4 A. Yes.

5 Q. And that is missing from Defendant's Exhibit JR9463, right?

6 A. Yes.

7 Q. And so Government Exhibit 1227 is your invoice, right?

8 A. Yes.

9 Q. And sir, did you create JR9436? Is that your invoice?

10 A. Yeah, it's the exact same reservation, same confirmation
11 number. There were times where Mr. Rechnitz would request the
12 booking confirmation showing the rate that he paid for the
13 reservation as well as a confirmation without a rate. So I
14 guess when he goes ahead and takes care of the reservation for
15 whoever he's taking care of, in this case Mr. James Grant, he
16 could tell Mr. Grant there's no payment for him to make.

17 Q. So you would create this other document as well, right?

18 A. Yes.

19 Q. And on this second document you would take out all of the
20 information that was there with respect to any charge, right?

21 A. That's correct.

22 Q. And you did that at Mr. Rechnitz's request, right?

23 A. Correct.

24 Q. And you testified that the reason you did that was because
25 Mr. Rechnitz would say he didn't want the person who was

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Goldstein - Cross

1 receiving the room to know he was paying for it, right?

2 A. Correct. I would assume that, yeah.

3 MS. NECHELES: One minute, your Honor.

4 THE COURT: That's fine, counsel, please take your
5 time.

6 (Pause)

7 MS. NECHELES: I have no further questions, your
8 Honor.

9 THE COURT: Thank you very much.

10 Counsel for Mr. Grant, Ms. Cappellino.

11 CROSS-EXAMINATION

12 BY MS. CAPPELLINO:

13 Q. Good afternoon, Mr. Goldstein, I'm Anjelica Cappellino.

14 I'm one of the attorneys that represent James Grant.

15 How are you?

16 A. How are you?

17 Q. You testified that you have done a number of hotel bookings
18 through Luxury Connections for Mr. Rechnitz, is that correct?

19 A. Yes.

20 Q. And you have also done bookings on behalf of others for
21 Mr. Rechnitz, right?

22 A. Yes.

23 Q. And I believe you testified to one, an individual by the
24 name of Laura Colon, correct?

25 A. Yes.

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Goldstein - Cross

1 Q. And that's one example of Mr. Rechnitz contacting you to
2 book a hotel for someone other than himself, right?

3 A. Yes.

4 Q. Now he also contacted you about my client, Mr. Grant,
5 right?

6 A. Yes.

7 Q. And that was first via text message on August 1st, 2013?

8 A. It was a text message, I don't have it in front of me, so I
9 can't confirm the exact date.

10 Q. We'll bring that up for you.

11 A. August 1st, 2013, yep, that's the text message.

12 Q. And he said he needs help, he wants to prepay for a hotel
13 in Rome for a friend?

14 A. Yes.

15 Q. And said get a decent hotel in Rome, right?

16 A. Yes.

17 Q. And you testified that by "decent," you thought that maybe
18 meant luxury, coming from Mr. Rechnitz?

19 A. Correct.

20 Q. But nowhere in this text does he say get me a luxurious
21 hotel, right?

22 A. Correct.

23 Q. So you just assumed?

24 A. Yeah.

25 Q. To be clear, you never met Mr. Grant at that point, right?

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Goldstein - Cross

1 A. I don't recall having met him at that point.

2 Q. Did Mr. Grant ever come into the Luxury Connections office?

3 A. No.

4 Q. Did you ever meet him at any of these cigar bars I believe
5 you testified to on cross-examination?

6 A. Yeah, I don't know if Mr. Grant was there that night. I
7 can't recall that.

8 Q. So at Mr. Rechnitz's request, you did book a room, you in
9 fact many booked a room at the Hotel Regina Baglioni, correct?

10 A. Baglioni, yep.

11 Q. And we're looking at Government Exhibit 914. This is the
12 confirmation email for that booking, right?

13 A. Yes.

14 Q. And the date on that is August 8, 2013, right?

15 A. Yes.

16 Q. So in about -- well, in exactly a week since Mr. Rechnitz's
17 request, you processed that booking for him, right?

18 A. Yes.

19 Q. And this is for a hotel stay from August 15 to the 17th,
20 correct?

21 A. Yes.

22 Q. So you booked a stay approximately a week in advance,
23 right?

24 A. Yes.

25 Q. And then you forwarded this confirmation email to

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Goldstein - Cross

1 Mr. Rechnitz, right?

2 A. Yep.

3 Q. And Mr. Grant is not on that email, correct --

4 A. On the email --

5 Q. -- on Government Exhibit --

6 THE COURT: Please let her finish the question and
7 then you can have the opportunity to respond.

8 Please ask the question again.

9 Q. On Government Exhibit 914, this email was forwarded to
10 Mr. Rechnitz, right?

11 A. Yes.

12 Q. It was not forwarded to Mr. Grant, right?

13 A. Correct.

14 Q. Because you had no correspondence with Mr. Grant, right?

15 A. Correct.

16 Q. You never phoned him about this reservation, right?

17 A. Correct.

18 Q. You never emailed?

19 A. I never emailed Mr. Grant.

20 Q. And you never met him in person to discuss this
21 reservation, right?

22 A. Correct.

23 MS. CAPPELLINO: One moment, please.

24 THE COURT: Please take your time, counsel.

25 (Pause)

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1 MS. CAPPELLINO: No further questions, thank you.

2 THE COURT: Thank you.

3 Counsel for the United States?

4 MS. LONERGAN: Nothing further, your Honor.

5 THE COURT: Thank you very much. Thank you very much
6 for your testimony. You can step down. Thank you.

7 Counsel for the United States?

8 MR. BELL: Your Honor, we'll call our next witness in
9 just a moment, but we would like to play a recording first.
10 And given it is the first recording that we have had in a
11 little while, it might be an appropriate place for the
12 instruction that the parties discussed earlier.

13 THE COURT: Thank you very much.

14 So ladies and gentlemen, you've heard recordings
15 played into evidence so far at the trial and I understand that
16 you're about to hear more recordings today.

17 You should know that in certain instances evidence may
18 be admitted only for a particular purpose and not just
19 generally for all purposes. I therefore instruct you that the
20 statements made on these recordings by people other than Jeremy
21 Reichberg, James Grant, Michael Harrington, Michael Andriano
22 and Michael Melici on the recordings you heard so far, and
23 those that you may hear today, are not admitted into evidence
24 for their truth. The statements by speakers other than Jeremy
25 Reichberg, James Grant, Michael Harrington, Michael Andriano

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1 and Michael Melici are admitted to place the defendants'
2 statements in context so you can understand their state of mind
3 during those conversations, and as background to help you
4 understand what the defendants meant by their statements. In
5 addition, you may consider the fact that the statements were
6 made, separate and apart from the truth of the statements
7 themselves.

8 Let me give you an example of how this rule works in
9 practice. I'm going to draw on an example that I gave you at
10 the outset of the trial. Remember when I talked to you about
11 the umbrella and the raincoat?

12 So if on one of the recordings you hear Jeremy
13 Reichberg, James Grant, Michael Harrington, Michael Andriano or
14 Michael Melici say "It's raining outside," you can consider
15 that evidence for its truth, that is, whether it was in fact
16 raining at that time. However, if you hear any person other
17 than Mr. Reichberg, Mr. Grant, Mr. Harrington, Mr. Andriano or
18 Mr. Melici say "It is raining outside" on a recording, you
19 cannot consider that statement for its truth. In other words,
20 it would not be evidence that it was in fact raining at that
21 time. But, for example, you can use that statement to place
22 other statements by a defendant in context or to understand a
23 defendant's state of mind. For example, if, in response to a
24 statement that "It is raining outside," made by one of those
25 other people, a defendant said "Yes, it is," you could use the

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1 statement "It is raining outside" as context to understand what
2 he, the defendant, was referring to.

3 I hope that that's helpful.

4 Counsel for the United States, can you please begin
5 with your recordings?

6 MR. BELL: Yes, your Honor. With the Court's
7 permission, we would like to ask the jury to retrieve its black
8 binders and to turn to tab 923. We will also have it up on
9 your screens.

10 Tab 923T corresponds with Government Exhibit W00923T,
11 which, your Honor, the government would presently offer
12 pursuant to the earlier wire stipulation I believe without
13 objection.

14 MS. NECHELES: No objection.

15 MR. MERINGOLO: No objection.

16 THE COURT: Thank you. I'm accepting Exhibit 923 into
17 evidence.

18 (Government's Exhibit 923 received in evidence)

19 MR. BELL: I want to make sure everyone from the jury
20 found it. Great.

21 So with the Court's permission, your Honor, the
22 government would like to play Government Exhibit 923, a
23 January 16, 2015 call at 9:30 a.m. between the defendants
24 Mr. Grant and Mr. Reichberg.

25 THE COURT: Thank you. You can proceed.

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DeMartino - Direct

1 (Audio recording played)

2 MR. BELL: Thank you, your Honor.

3 With that, the government calls Lieutenant Michael
4 DeMartino.

5 MICHAEL DeMARTINO,

6 called as a witness by the Government,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BELL:

10 Q. Good afternoon, Lieutenant DeMartino.

11 A. Good afternoon.

12 Q. Where do you work, sir?

13 A. I'm a police lieutenant with the Port Authority Police
14 Department of New York and New Jersey.

15 Q. What is the Port Authority Police Department of New York
16 and New Jersey?

17 A. The Port Authority is a bistate police department which was
18 enacted by Congress to control all the property between New
19 York and New Jersey tunnels, bridges, airports, shipping ports,
20 bus terminals, and the Port Authority Police Department polices
21 that.

22 Q. And so what kinds of specific responsibilities does the
23 Port Authority police have with respect to policing those
24 bridges, tunnels and other assets?

25 A. The Port Authority Police Department, just like any other

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DeMartino - Direct

1 police department, enforces vehicle and traffic law in the
2 states of New York and New Jersey, low level misdemeanor all
3 the way up to high level felony crimes that are committed in
4 each state and in or on the facilities in which we police.

5 Q. Can you tell me about some of the specific facilities that
6 the Port Authority police has responsibility for?

7 A. Yes, they are responsible for the Holland Tunnel, the
8 Lincoln Tunnel, the George Washington Bridge, the World Trade
9 Center, the bus terminal in Manhattan, the bus terminal in
10 Washington Heights, Newark Airport, JFK Airport, LaGuardia
11 Airport, the shipping terminals in Brooklyn, Holland Hook, Port
12 Newark, Port Elizabeth, the PATH train between New York and New
13 Jersey. I'm probably forgetting a few.

14 Q. How long have you been with the Port Authority police?

15 A. I became a Port Authority police officer in 2002.

16 Q. What jobs did you have prior to joining up with the Port
17 Authority Police Department?

18 A. In 1992 I enlisted in the United States Marine Corps. In
19 1998 I became a New York State trooper. In 2001 I was a
20 detective with the Hudson County prosecutor's office in Jersey
21 City, New Jersey. In 2002 I transferred to Port Authority.

22 Q. Now you mentioned that you're a lieutenant with the Port
23 Authority police. How long have you been a lieutenant?

24 A. I obtained the rank of lieutenant approximately three and a
25 half years ago, so 2015, about.

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DeMartino - Direct

1 Q. And what are your specific duties and responsibilities as a
2 lieutenant, which is to say stemming from your rank?

3 A. As a lieutenant I directly supervise police sergeants and
4 police officers. I make sure that orders are given out at roll
5 calls. I oversee arrests, make sure probable cause is there
6 when a police officer brings in an arrest. I pay people their
7 time and their overtime. I ensure that the command meets the
8 specifications needed and the patrol vehicles meet the
9 specifications needed in order for the police officers to
10 utilize them, and I check all their training and equipment
11 and -- their equipment and their vehicles and the training
12 before they go out on patrol.

13 Q. I want to direct your attention, Lieutenant, to March of
14 2008. What was your title with the Port Authority Police
15 Department at that point?

16 A. In 2008 I was a police officer.

17 Q. And as part of your responsibilities as a police officer,
18 did you participate in something called a police escort?

19 A. Yes.

20 Q. Within the context of the Port Authority police, what are
21 police escorts?

22 A. Police escorts are when I would either escort a vehicle or
23 a person in a vehicle or a vehicle without a person, such as an
24 ambulance, to a designated point, from point A to and point B.

25 Q. And under what circumstances might the Port Authority

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DeMartino - Direct

1 police provide police escorts?

2 A. A variety of different circumstances, some of them being
3 escorting a vehicle against traffic to get to a disabled
4 vehicle, to expediting ambulance, to a motor vehicle crash or
5 through the tunnel if say someone was in need of an emergency
6 situation and they need to expedite through, or special
7 dignitaries, foreign and domestic, that I was ordered to
8 perform from the sergeants and lieutenants.

9 Q. What sorts of foreign dignitaries might you escort as part
10 of your job responsibilities?

11 A. Foreign dignitaries, if UNGA was in or the UN was in
12 session, sometimes other foreign dignitaries would visit the
13 United States, and we would provide mutual aid for New York
14 City or for the Secret Service or whoever asked for us to
15 assist them in getting through the tunnel and bridges.

16 Q. What sorts of vehicles would you use in order to provide
17 escorts?

18 A. The only vehicle that I ever used to provide an escort was
19 a police car.

20 Q. What role would a police car provide in making that escort
21 work? What would the car actually do?

22 A. I would use my car to facilitate the vehicle following me
23 or the convoy following me to get through traffic or to maybe
24 mitigate a traffic situation so they wouldn't be stagnant in
25 traffic.

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DeMartino - Direct

1 Q. As part of these particular tasks, would you radio ahead
2 and coordinate with other Port Authority personnel?

3 A. Yes.

4 Q. Can you give me an example of when that might fit into an
5 escort procedure?

6 A. Yes. Normally what would happen if I was providing an
7 escort, whether it would be from New York to New Jersey or New
8 Jersey to New York, it would pretty much have been go the same
9 way. I would make other units in my precinct known to my
10 whereabouts as soon as I arrived at the point where I was
11 picking up the escort by radioing them over the radio,
12 obviously, and telling them that I'm at a certain point waiting
13 the arrival of the escort.

14 Once the escort was in sight or once the escort came
15 up to me, I would radio my other units to tell them I had the
16 escort in tow, and then I would proceed with the escort. And
17 as I proceeded with the escort, I would advise everyone of how
18 close I was in proximity of getting to the tunnel or certain
19 points en route to the tunnel so that they could advise me in
20 return if there was an accident that came up or if there was
21 some type of traffic that I needed to go around to take a
22 different direction or route.

23 And then that would continue all the way to other
24 side, whether I was going to New York or New Jersey, and then I
25 would call the completion of the escort as soon as the escort

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1 broke off, which means they go their own way.

2 Q. So back in 2008, about how often would you say you assisted
3 in providing police escorts of this type?

4 A. I couldn't answer that question without guessing.

5 Q. I'm asking for an estimate.

6 A. In 2008?

7 Q. Sure. About how many times a year around that point in
8 your career?

9 A. I would say -- up until 2008 or just in 2008?

10 Q. Just around 2008.

11 A. I provided escorts maybe 40, 50.

12 Q. Now as part of your job did you sometimes escort vehicles
13 through the Lincoln Tunnel?

14 A. Yes, sir.

15 Q. And with respect to escorts through the Lincoln Tunnel in
16 particular, procedurally, what would that involve --

17 A. Procedurally to pick up --

18 Q. -- in order to make the escort actually happen?

19 A. Well, I would always receive orders from a superior officer
20 in order to provide an escort, I would never just do an escort
21 on my own. So I would receive an order at roll call or
22 sometime during the tour from one of my supervisors, and then I
23 would complete paperwork or write in my memorandum book that
24 the escort took place. Not always was the paperwork done, but
25 most of the time I tried to do what I was supposed to do.

IBJTGRA5

DeMartino - Direct

1 Q. What would you do in order to navigate the Lincoln Tunnel
2 properly?

3 A. What I would do is I would ascertain information in order
4 to expeditiously get that escort through the tunnel. I would
5 keep abreast of any traffic incidents that we had at that time
6 or any other escorts that were coming through or any problems
7 that I would anticipate having and I would make a determination
8 on which way to go.

9 Q. Now in escort situations like the one that we have been
10 talking about, would you work with other law enforcement
11 agencies?

12 A. Yes, sometimes.

13 Q. And what sorts of law enforcement agencies would you find
14 yourself working with?

15 A. It could be any law enforcement agency, but mainly it was
16 the secret service, the NYPD, the New Jersey State Police, New
17 York State Police, Department of State personnel, sometimes the
18 local municipalities would help, but it was mostly the federal
19 agencies, the New York City Police Department and the Port
20 Authority Police Department and the New Jersey State Police,
21 because we sometimes would hand it over to them on the
22 turnpike.

23 Q. When you say handing over to another law enforcement
24 entity, what do you mean by that?

25 A. Usually I would be given the task to provide the escort,

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1 like I stated before, from point A to point B, but there was a
2 rare occasion where sometimes the supervisor would say, you
3 know, for an example, don't drop them off on the New Jersey
4 Turnpike, take them all the way to Teterboro Airport or to
5 Newark Airport or they would go a little beyond my jurisdiction
6 into another Port Authority facility jurisdiction.

7 Q. Now generally, Lieutenant, where do requests for the Port
8 Authority Police to assist with escorts come from?

9 In other words, who makes those requests of the Port
10 Authority Police?

11 A. The people who make the requests to the Port Authority
12 Police would be either a phone call or email from the Secret
13 Service or the NYPD or from another agency stating that they
14 need a request of mutual aid.

15 Q. And generally would you communicate directly with the
16 people inside the escorted vehicle or vehicles?

17 A. Very few incidents where that would happen.

18 Q. Now in the case of escorting foreign dignitaries, did those
19 requests tend more to come from one law enforcement entity or
20 another?

21 Let me ask a better question. In other words, when
22 the call came in for the Port Authority Police to assist
23 specifically with assisting a foreign dignitary moving, did
24 those requests tend to come from one or another law enforcement
25 entity more than others?

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1 MS. NECHELES: Your Honor, I object.

2 THE COURT: Counsel, can you please rephrase the
3 question?

4 MR. BELL: Sure.

5 MS. NECHELES: To his knowledge, your Honor?

6 THE COURT: Thank you. Counsel, please proceed.

7 MR. BELL: Sure.

8 BY MR. BELL:

9 Q. Let's take a step back. Lieutenant, you mentioned filling
10 out paperwork with respect to these escorts. Did you fill out
11 paperwork to memorialize the escorts once you did them?

12 A. I'm supposed to do that, but not -- I didn't always do
13 that.

14 Q. What kinds of paperwork were you supposed to fill out?

15 A. There's a Port Authority escort form.

16 Q. What kinds of information was kept on the escort form?

17 A. It's generic information, like where I picked up the
18 vehicle, where I dropped off the vehicle, the time I arrived,
19 the time I completed it, the total duration of the minutes, the
20 vehicles which may have been utilized by my departments or
21 other departments, agencies that assisted with the escort
22 besides my own department, other people that might have been
23 involved who I knew of at the time, whether they were
24 supervisors or other police officers, sometimes the name of the
25 dignitary or the ambulance number or whatever it was that I was

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1 escorting, any type of details that would be in the escort.

2 Q. And when would you fill these escort forms out relative to
3 when the escorts took place?

4 A. They would always be filled out prior to completion of my
5 tour of the duty for the day.

6 Q. And why was that?

7 A. Because all of our reports are supposed to be submitted
8 promptly and by the completion of our tour of duty.

9 Q. Once you filled out these forms by the conclusion of your
10 tour, what would you do with them?

11 A. They would be placed in the sergeant's box or the
12 lieutenant's box for approval or to be reviewed and then put
13 into a staff command box to be filed.

14 MR. BELL: So what I would like to do, with the
15 Court's permission, is have Mr. Hamilton place on the witness's
16 screen, that of the Court's and that of the parties', what has
17 been marked for identification as Government Exhibit 917.

18 THE COURT: Please proceed.

19 BY MR. BELL:

20 Q. So Lieutenant, are you familiar with -- well, first of all,
21 is there a document on your screen?

22 A. Yes, there is.

23 Q. Are you familiar with that document?

24 A. Yes, sir.

25 Q. And how are you familiar with that document, sir?

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DeMartino - Direct

1 A. This is the Port Authority Police escort form that we fill
2 out upon the completion of what I just testified to.

3 Q. Is this a form that you yourself filled out?

4 A. Yes.

5 Q. To your knowledge, are these forms maintained by the Port
6 Authority Police in the ordinary course of business?

7 A. Yes, they are.

8 MR. BELL: Your Honor, the government offers 917 as a
9 business record.

10 MS. NECHELES: No objection, your Honor.

11 MR. MERINGOLO: No objection.

12 THE COURT: Thank you. I'm accepting Exhibit 917 into
13 evidence.

14 (Government's Exhibit 917 received in evidence)

15 THE COURT: You may proceed.

16 MR. BELL: Thank you. May we publish to the jury?

17 THE COURT: You may.

18 MR. BELL: Mr. Hamilton.

19 BY MR. BELL:

20 Q. So I want to direct your attention to 917, and I will ask
21 you to, with Mr. Hamilton's assistance, walk me through the
22 form.

23 I want to direct you first to the top line of
24 information where "VIP" is checked and where "escort" is
25 checked, and there are numbers there. Mr. Hamilton has

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1 highlighted them for us. Do you see that, sir?

2 A. I do.

3 Q. And so what does that information tell us?

4 A. VIP for very important person and escort for the escort
5 number that was entered into the blotter for that year. Each
6 number annotates the next number in chronological order of
7 times that that particular duty was performed by a police
8 officer at the Lincoln Tunnel during the course of that year.

9 (Continued on next page)

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DeMartino - Direct

1 BY MR. BELL:

2 Q. So do I take it that that would be your tenth VIP escort
3 and eleventh VIP escort overall in 2008?

4 A. According to this form, yes.

5 Q. And further down, there is a Captain John Collins, and it
6 says from Police Officer DeMartino. I imagine that Police
7 Officer DeMartino is you?

8 A. Yes, it is.

9 Q. Then immediately below that, there is a date. What is the
10 date there?

11 A. March 11, 2008.

12 Q. What does that date signify, Lieutenant DeMartino?

13 A. It signifies that I completed this report on that date.

14 Q. Now, there is a box immediately below that checked, called
15 "Eastbound." I'll come back to that in just a moment. Then
16 immediately below that, there are -- it says, "Persons:
17 Israeli diplo," and some additional information that says,
18 "Route 3 W/B to NYC, 42nd and Dyer."

19 So let's start out with "Eastbound." What does
20 "Eastbound" mean with respect to the Lincoln Tunnel?

21 A. "Eastbound" means that the escort was going from New Jersey
22 into New York.

23 Q. Mentioned under persons is "Israeli diplo." What does that
24 mean?

25 A. The reason that this escort was performed was, I was given

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DeMartino - Direct

1 the information that it was for an Israeli diplomat, but I do
2 not know the name.

3 Q. Now, on the other side of the slash, there is Route 3.
4 Perhaps for the uninitiated here, where is Route 3?

5 A. Route 3 is a state road in New Jersey that links to 495 and
6 the New Jersey Turnpike, and it directly filters into the
7 Lincoln Tunnel going eastbound into New York City.

8 Q. Do you have a sense, Lieutenant DeMartino, of how long it
9 would take one to get from the nearest point on Route 3 to the
10 mouth of the Lincoln Tunnel, say, if there were no traffic?

11 Let me ask perhaps a better question. About how far
12 is it from Route 3, the closest point on Route 3 to the Lincoln
13 Tunnel, to the Lincoln Tunnel itself?

14 A. Probably about four miles.

15 Q. Now, then after Route 3, there is a "W/B." Do you have an
16 understanding of what you wrote there for "W/B"?

17 A. Yes. That means Route 3 westbound.

18 Q. What do you mean by Route 3 westbound?

19 A. That is where the escort was to be picked up from, because
20 that's my starting point.

21 Q. And then it says, "to NYC, 42nd," and I believe that is
22 Dyer, D-y-e-r?

23 A. Yes.

24 Q. Am I right in assuming that "NYC" is New York City?

25 A. Yes, sir.

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DeMartino - Direct

1 Q. Do you have an understanding of where 42nd and Dyer is?

2 A. Yes, I do.

3 Q. Where is that intersection?

4 A. When you come out of the south tunnel in New York City,
5 42nd and Dyer would be approximately a -- if a quarter mile up
6 north to the left of when you exit the tunnel.

7 Q. You mentioned the south tunnel. Are there, in fact,
8 different tunnels within the Lincoln Tunnel?

9 A. There are.

10 Q. About how many?

11 A. There are three tunnels.

12 Q. And what distinguishes the south tunnel from the others, if
13 anything?

14 A. Well, if you're going to describe them from New York to --
15 from New Jersey to New York, it would be easiest. The layout
16 of the nomenclature of the tunnels would be the tunnel to the
17 north of where you're standing would be the south tunnel, the
18 tunnel in the center would be the center tunnel, and the tunnel
19 on the left of you, which would be the south of you, would be
20 the north tunnel.

21 Q. I want to direct your attention now to lower than the
22 person field, where we have "Tour included," and there is what
23 appears to be 3, the letter X, and 11. What's that a reference
24 to, sir?

25 A. That particular day, I was designated to work the 3:00 p.m.

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1 to 11:00 p.m. tour of duty.

2 Q. Right next to that, there's "Vehicles used." What does the
3 number there refer to?

4 A. That's the patrol vehicle that I used that day. The marked
5 sector car, it's labeled 5134-1 on the side of it.

6 Q. Immediately below that, there is a line that says "PA
7 police detail," and then there's a checkmark next to
8 "Superiors." What does that refer to?

9 A. That means there were superior officers that were involved
10 in my escort.

11 Q. Then there is "Scheduled Time: 1610." For those of us who
12 may not be conversant in military time, what's that in normal
13 folks' time?

14 A. That would be 4:10 p.m.

15 Q. What does "Scheduled Time" refer to?

16 A. That's the -- that was the time that my superior officer
17 told me to go to that point to pick up the escort, so I would
18 be waiting at that time whether the escort was there or not.

19 Q. Then there is "Arrival Time." The arrival time listed is
20 1635 hours. Am I right in saying that's 4:35 p.m.?

21 A. Yes, you are.

22 Q. So about 25 minutes after the scheduled time?

23 A. Yes.

24 Q. And the "Arrival Time" means what precisely?

25 A. It's approximately the time that I picked up the escort at

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DeMartino - Direct

1 the location I was waiting for it.

2 Q. Right next to that, there's "Completion Time: 1648 hours."

3 Fair to say that's 4:48 p.m.?

4 A. Yes, it is.

5 Q. What does "Completion Time" refer to?

6 A. That's the time that I would break off the escort at 42nd
7 and Dyer in New York City and either go on my own way or pass
8 it off to a waiting -- an awaiting unit in New York City.

9 Q. So is it fair to say that, according to the information
10 here, you picked up the escort at Route 3 at around 4:35 p.m.,
11 and then completed the escort on the other side of the Lincoln
12 Tunnel at 4:48 p.m.?

13 A. Yes.

14 Q. So that would be about 13 minutes from one side of the
15 tunnel to the other plus whatever it took you to get to Route
16 3. In your experience, Lieutenant, does that make it pretty
17 good time?

18 A. For that time of day, yes.

19 Q. Now, immediately below that, there is a series of boxes,
20 and it's labeled "All Agencies Involved." The Port Authority
21 police are checked, and I'm guessing that's a reference to your
22 involvement?

23 A. Yes, myself and my superiors and anybody else who assisted
24 me.

25 Q. There are also a series of other options below, and of

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1 these, one of them is checked. That box is next to "NYPD."

2 What does that indicate, sir?

3 A. That indicates that there was an NYPD unit, either marked
4 or unmarked, waiting on the other side of the tunnel for me
5 between the area of 40th and 42nd Street on Dyer Avenue
6 northbound in New York City.

7 Q. So what is it that the NYPD would be waiting to do on the
8 other side of that escort?

9 A. They would be waiting for me to come through with the
10 escort and take control of it.

11 Q. Finally, under "Remarks" at the very bottom, there is some
12 handwriting here. Is this your handwriting?

13 A. Yes, it is.

14 Q. And it says, "Used south tun near lane. Nothing unusual to
15 report." Now, when you say "Used south tun," I assume you're
16 referring to the south tunnel?

17 A. Yes, I am.

18 Q. When you say "Used south tunnel near lane," what do you
19 understand it is that that means with respect to the lane of
20 the south tunnel that you used?

21 A. There are two lanes inside each of our tunnels. There's a
22 near lane and a far lane. The near lane is designated by being
23 the lane with the catwalk, and the far lane is the lane without
24 the catwalk, so I primarily utilized the near lane for this
25 particular escort.

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1 Q. Then in order to get through to the south tunnel, what is
2 your understanding of -- well, first of all, would you have
3 radioed ahead in this sort of call, the call described --
4 rather, the escort call described on this piece of paper?

5 A. Could you ask that again?

6 Q. Sure.

7 Would you have radioed ahead to colleagues as any part
8 of effecting this particular escort?

9 A. Yes. I would have 100 percent radioed ahead.

10 Q. For what purpose?

11 A. While I'm waiting there for the escort, I radio ahead to
12 make sure that traffic is still -- that I'm still able to pass
13 traffic at certain locations, and I'm going to let them know
14 that I have the escort in tow.

15 Q. What, if anything, do your colleagues on the other side of
16 the radio do in order to maintain a clear lane until you get
17 there?

18 MS. NECHELES: Your Honor, I object. This is --

19 THE COURT: Thank you.

20 Can you rephrase the question, please, counsel?

21 BY MR. BELL:

22 Q. Do you have an understanding, Lieutenant, of what it is
23 that your colleagues would do in order to maintain the clarity
24 of the lane?

25 MS. NECHELES: Objection.

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1 THE COURT: Thank you.

2 You can answer the question.

3 MS. NECHELES: Your Honor, I object to this general
4 procedure as opposed to what happened.

5 THE COURT: Thank you.

6 Counsel, can you rephrase the question?

7 MR. BELL: I think that's admissible, your Honor. I'd
8 like to ask it, if I can.

9 THE COURT: Thank you.

10 Please rephrase the question.

11 BY MR. BELL:

12 Q. Now, Lieutenant, do you recall this particular escort?

13 A. No.

14 Q. Do you, nevertheless, have an understanding of how you
15 would have done escorts of this sort at that time?

16 A. Yes, I do.

17 Q. And you testified a moment ago that you would have used the
18 radio in order to call ahead and make sure things were clear?

19 A. Yes, I would.

20 Q. What is your understanding of what the people on the other
21 side of that call would have done, if anything, in order to
22 keep the lane clear?

23 MS. NECHELES: Objection.

24 THE COURT: Thank you.

25 You can answer the question.

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1 THE WITNESS: Well, what the people -- the people on
2 the other side won't necessarily do anything to keep the lane
3 clear because it's inside a tunnel, and it's over, you know, a
4 mile and a half of roadway, but what they do is they attempt to
5 sometimes divert traffic on the other side to alleviate the
6 congestion, so I can come through quicker. But there's nothing
7 they can do physically inside the tunnel besides pull the
8 traffic out.

9 Q. How did they accomplish the diversion of traffic that you
10 just alluded to?

11 MS. NECHELES: Objection, your Honor.

12 THE COURT: Thank you.

13 Can you rephrase the question, please, counsel?

14 BY MR. BELL:

15 Q. You mentioned a moment ago that your colleagues would look
16 to divert traffic at the other end in order to keep the lane
17 clear?

18 MS. NECHELES: Objection. There were some times they
19 would do that. There's no testimony --

20 THE COURT: Thank you.

21 Counsel, can you rephrase the question, please?

22 Q. On the occasions when your colleagues would look to divert
23 traffic, what is your understanding of how they did so?

24 MS. NECHELES: Objection.

25 THE COURT: Thank you.

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1 You can answer the question.

2 THE WITNESS: What they would do is they would put in
3 diversions and either push traffic northbound on Dyer or
4 southbound on Dyer to alleviate the traffic in either the near
5 lane or the far lane, whichever lane I would be utilizing.

6 In addition to that, sometimes they would hold one
7 lane of traffic while pulling another.

8 BY MR. BELL:

9 Q. How does that work?

10 A. The police officers on the other side utilizing either
11 their bodies or a marked police unit would place diversions in
12 to -- so that traffic could not flow past their body or past
13 the police car in a specific direction and deter it into
14 another direction, so that I can proceed with the escort
15 quicker through the tunnel.

16 Q. Where would you be with respect to the escort while going
17 through the tunnel?

18 MS. NECHELES: Objection, your Honor. I object to
19 this whole line.

20 THE COURT: Thank you.

21 You can answer the question.

22 THE WITNESS: I would be utilizing my police car and
23 in front of the escort that was following me.

24 Q. Thank you.

25 Now, other than what you have put down on this form,

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DeMartino - Direct

1 Lieutenant, do you have any independent recollection of this
2 particular escort?

3 A. No.

4 Q. Do you have yourself any firsthand knowledge of how the
5 Port Authority police came to assist with this particular
6 escort?

7 A. No.

8 Q. Do you have any independent knowledge of whether the person
9 inside was, in fact, an Israeli diplomat?

10 A. No.

11 Q. Did you ever actually interact with the subjects -- that
12 is, the persons in the escorted vehicle -- on this occasion?

13 A. No.

14 Q. Did you ever meet, to your knowledge, an individual named
15 Jeremy Reichberg?

16 A. No.

17 Q. Jona Rechnitz?

18 A. No.

19 Q. Lev Leviev?

20 A. No.

21 Q. Rotem Rosen?

22 A. No.

23 Q. After you waived off investigators -- I'm sorry. After you
24 were waved off by the NYPD, was it customary for you to take
25 any sort of follow-up measures with respect to the escort other

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DeMartino - Cross

1 than filling out the paperwork?

2 A. Just to tell the units at the Lincoln Tunnel that I
3 completed my escort over the radio and inform my supervisors.
4 Other than that, no.

5 Q. Thank you.

6 MR. BELL: One moment, please?

7 (Pause)

8 MR. BELL: No further questions for Lieutenant
9 DeMartino. Thank you.

10 THE COURT: Thank you.

11 MS. NECHELES: May I?

12 THE COURT: Please do. Proceed.

13 MS. NECHELES: Thank you.

14 CROSS-EXAMINATION

15 BY MS. NECHELES:

16 Q. Lieutenant DeMartino, you testified that -- can you explain
17 an escort again?

18 A. Sure.

19 Generally, when you receive orders to get an escort or
20 to perform an escort -- we're talking about vehicle escorts,
21 right?

22 Q. Yes, sir.

23 A. -- you -- one of the superior officers would give me the
24 order, and I would arrive at point A and wait at that point
25 until I received my pickup of the escort. And then I would

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DeMartino - Cross

1 take that escort and proceed with that escort in a safely, but
2 effectively -- an effective manner through the Lincoln Tunnel,
3 and I would drop it off at a designated point on the other
4 side, whether it be New York or New Jersey.

5 Q. Okay. When you say receive a pickup, that doesn't mean
6 someone gets in your car, right?

7 A. No.

8 Q. An escort is when there's one police car in front and
9 someone else -- another car following behind; is that correct?

10 A. Usually, yes. There may have been one or two occasions
11 throughout my career where somebody may have gotten in my car.

12 Q. Okay. And that, you would also refer to as an escort or
13 just giving someone a ride in a car?

14 A. For this particular purpose, that would be an escort.

15 Q. For what particular purpose?

16 A. To get them from point A to point B. But we're talking
17 about an official capacity, like a governor or, you know,
18 someone with some type of -- someone usually with some type of
19 official business.

20 Q. Okay. So when you would pick up someone sometimes, there
21 are times when you would pick up someone to do this, right?

22 A. Yes.

23 Q. When you looked at the numbers before on Government Exhibit
24 917, about how many times had you done this that year?

25 You said that was with the form set, correct?

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DeMartino - Cross

1 MR. BELL: Objection.

2 THE COURT: Thank you.

3 Counsel, can you rephrase?

4 MS. NECHELES: Can we show Government Exhibit 917?

5 BY MS. NECHELES:

6 Q. The numbers up there on the top, the VIP 10 and the Escort
7 11, those numbers might not be accurate, right?

8 MR. BELL: Objection.

9 THE COURT: Thank you.

10 You can answer the question.

11 THE WITNESS: Most likely, those numbers are not
12 accurate.

13 Q. Because you didn't always fill out the paperwork, that's
14 what you testified, right?

15 A. Well, not just myself. You know, we have lots of other
16 work to do, so even though we're supposed to fill out this
17 paperwork, we don't necessarily always get to the escort form.
18 Other things may take precedence over this even though we're
19 supposed to do it.

20 Q. And, in fact, there were many, many escorts that you were
21 giving, right?

22 A. Depending on the time of year, there are a good amount of
23 escorts.

24 Q. It's a frequent occurrence, right, to give escorts,
25 correct?

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DeMartino - Cross

1 A. I don't know if -- it wouldn't -- I don't know the
2 definition of your frequency would be.

3 Q. Well, do you recall being interviewed about this escort and
4 telling the person who interviewed you that you've given
5 hundreds of escorts in your career?

6 A. I have.

7 Q. And many hundreds, right?

8 A. Probably at least 200, I would say, if not more.

9 Q. Am I correct that you testified you used to be highway
10 patrol?

11 A. I used to be a state trooper.

12 Q. A state trooper?

13 A. Yes.

14 Q. You gave escorts, also, as a state trooper; am I correct?

15 A. No, I don't believe I ever did one escort as a New York
16 State trooper.

17 Q. It's always been through the Port Authority police?

18 A. Yes, ma'am.

19 Q. And one of the things you give escorts, I believe you said
20 on direct, is to expedite ambulances; is that correct?

21 A. Well, that's one other type of escort, but there's many
22 different escorts that we give.

23 Q. Am I also correct that sometimes you would give an escort
24 when a body needs to get to the airport quickly, correct?

25 MR. BELL: Objection.

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DeMartino - Cross

1 THE COURT: Thank you.

2 You can answer the question.

3 THE WITNESS: What do you mean, a body?

4 BY MS. NECHELES:

5 Q. Well, the body is being transported for a funeral and needs
6 to get to the airport quickly?

7 MR. BELL: Objection.

8 THE COURT: Thank you.

9 You can answer the question.

10 THE WITNESS: The question is would I -- wait. Can
11 you repeat?

12 Q. Are escorts given for that as well, when a body needs to
13 get to the airport, do you know? If you don't know --

14 A. I have escorted soldiers, yes, that came back home that
15 were deceased.

16 Q. And sometimes prominent people who are not diplomats or
17 otherwise also get escorts?

18 A. Well, what do you mean by "prominent people"?

19 Q. Well, is it your understanding that sometimes, for example,
20 if someone like the Pope came to town, he would get an escort?

21 A. If I was given the order, then, yes.

22 Q. Okay. And orders are given for lots of different reasons
23 like that, right?

24 A. Yes.

25 MR. BELL: Objection.

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DeMartino - Cross

1 THE COURT: Thank you. I accept the answer.

2 BY MS. NECHELES:

3 Q. It's a wide variety of reasons that people get escorts for,
4 correct?

5 A. There are many different types of escorts, yes.

6 Q. Now, you have no recollection of this incident, right?

7 A. No.

8 Q. When you testified before about -- you were asked some
9 questions about what would happen sometimes. That had
10 nothing -- your answers had nothing to do with this incident,
11 right?

12 A. I couldn't honestly answer that. I don't know. It could
13 have possibly. The escorts are performed in such a manner,
14 that there's really not too much leeway in them. I mean, I'm
15 going through a tunnel, and I usually drop them off in
16 approximately the same spot and pick them up in approximately
17 the same spot. So, reasonably, I could assume that, yes, but
18 to be definite, no.

19 Q. Okay. But when you were asked questions about would
20 traffic be diverted one way or another, you have no
21 recollection of any traffic being diverted here, right?

22 A. I could not say.

23 Q. Meaning you have no recollection?

24 A. Yeah, no recollection.

25 Q. And, in fact, you were interviewed about this in 2016,

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1 right?

2 A. I was interviewed on numerous occasions.

3 Q. Okay. The first time, do you recall that that was around
4 2016?

5 A. Possibly, yes.

6 Q. You were interviewed by the Port Authority investigators?

7 A. I believe it was the Port Authority and the FBI.

8 Q. And, sir, am I correct that at that time, you said that
9 even in 2016, you had no recollection of this, correct?

10 A. Yeah, it would be impossible for me to remember every
11 escort that I've accomplished or performed.

12 Q. Am I correct that your general procedure -- well, in the
13 first place, the tunnel would never be shut down for an escort,
14 right?

15 A. The tunnel is never shut. I think in all my years there,
16 we might have shut it on two occasions, and that's for, like,
17 the President of The United States, and he very rarely travels
18 through the tunnel.

19 Q. The only times it gets shut down is for the President of
20 The United States, right?

21 A. Yeah. Every other time, we like to stop traffic, but we
22 don't really hold traffic, not like we would for the president,
23 from different roadways and cause some type of delay.

24 Q. When you say you like to stop traffic, am I correct that
25 what you mean is traffic is delayed while the escort slips in

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DeMartino - Cross

1 in front of other traffic?

2 A. It could be. It could be like that, yes.

3 Q. You don't even shut down a lane, right, in the tunnel?

4 A. It depends what you mean by "shut down."

5 Q. Well, you don't, like, completely clear a lane and make
6 sure that no other traffic is going through it, do you?

7 A. We usually don't shut down a lane in the sense of letting
8 all the traffic bleed out through the tunnel, but we'll usually
9 hold it on one side and let traffic bleed about halfway
10 through, and then once it bleeds halfway through, and the
11 escort gets in front of the traffic that's being held, by the
12 time the escort travels at a moderate speed through the tunnel,
13 usually the other traffic is still proceeding in that
14 direction, and then the other traffic that's being held is
15 released.

16 Q. So am I correct that the traffic is held for a couple of
17 minutes, so that the escort can go in and get ahead of the
18 other traffic?

19 A. Traffic is definitely held, yes.

20 Q. For a couple of minutes, correct, sir?

21 A. Well, it depends on the time of the escort. Every escort
22 would be different.

23 Q. Okay. Do you recall saying to investigators that the
24 tunnel would never be completely shut down during the process,
25 and that traffic would only be held briefly in order to create

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DeMartino - Cross

1 some distance between the vehicle being escorted and the
2 traveling public?

3 A. Yes.

4 Q. Do you recall?

5 A. Yes.

6 Q. And that is, in fact, what the practice was back then,
7 right?

8 A. The practice is the same today.

9 Q. And, sir, there are logs that are kept of the traffic and
10 of unusual incidents in the Lincoln Tunnel, right?

11 A. Logs of traffic?

12 Q. Well, the Lincoln Tunnel tour manager logs, correct?

13 A. I'm not a tour manager, so I don't know.

14 Q. Do you know whether there are logs kept of all unusual
15 activities there?

16 A. Well, you're talking about the civilian counterparts that
17 work at the Lincoln Tunnel, and I don't know what their
18 procedures are or what they do. I just know the police aspect.

19 Q. When you would do this escort, there would be only one lane
20 of traffic utilized, right?

21 A. No.

22 Q. For the escort?

23 A. Yes. Just because I wrote near lane on here, that's the
24 lane that I would use mostly during the escort, but that
25 doesn't mean that I didn't have to go into the far lane and

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1 back into the near. It just means that I mainly used the near
2 in this particular escort.

3 Q. Well, do you recall telling -- when you were interviewed in
4 2016, do you recall telling investigators that when escorts
5 were provided, only one traffic lane would be utilized to
6 conduct the escort?

7 A. I don't remember saying that, but if I did say that, that's
8 inaccurate.

9 Q. That would have been inaccurate?

10 A. That only one lane is used?

11 Q. Yes.

12 A. No. Because what if I needed to switch lanes?

13 Q. Oh, if you needed to switch lanes, you would switch lanes,
14 right?

15 A. Yes.

16 Q. But the traffic would not have been held in that other
17 lane, right?

18 A. Well --

19 MR. BELL: Objection, your Honor.

20 THE COURT: Thank you.

21 Can you please rephrase the question, counsel?

22 BY MS. NECHELES:

23 Q. Is that correct, the traffic would not have been held in
24 the other lane?

25 MR. BELL: Objection.

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1 THE COURT: Sustained.

2 BY MS. NECHELES:

3 Q. Well, sir, traffic maybe would have been held for a few
4 minutes briefly, you said, in one lane to let you go in?

5 MR. BELL: Objection, your Honor.

6 THE COURT: Thank you.

7 Q. Well, was that your testimony before?

8 MR. BELL: Objection, your Honor.

9 THE COURT: Thank you.

10 Sustained.

11 Q. Am I correct that you previously said that traffic would
12 only be held briefly in order to create some distance between
13 the vehicle being escorted and the traffic -- traveling public
14 when you would come into the tunnel; is that correct?

15 A. Yes, traffic is held at the mouth -- at the entrance to the
16 tunnel.

17 Q. But, in fact, all of this would have taken a few minutes,
18 right?

19 A. Well, every escort is different. You know, different times
20 of day, different times of year. You know, if UNGA is in town
21 or if the president is in town, like I can't answer that
22 question.

23 Q. You just testified a minute ago that you got through the
24 tunnel relatively quickly, right?

25 A. For this particular escort -- for this time of day and this

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1 particular escort we're talking about, yes.

2 Q. Okay. It was 13 minutes, right?

3 A. Well, it's not 13 minutes through the tunnel. It's 13
4 minutes from Route 3 in Secaucus, New Jersey, to 42nd Street
5 and Dyer in New York City. Thirteen minutes for the whole
6 thing.

7 Q. I see. So for that whole way, it only took you 13 minutes,
8 right?

9 A. According to what I wrote here, yes. The times could be a
10 little off.

11 Q. And traffic was not held anywhere else other than in the
12 tunnel, right?

13 A. Yeah, I don't have the capacity to do that.

14 Q. So it appears, from that timing, that traffic was
15 relatively light that day, wasn't it?

16 MR. BELL: Objection.

17 THE COURT: Thank you.

18 Can you rephrase the question, please, counsel?

19 BY MS. NECHELES:

20 Q. Okay. Well, sir, looking at that and based on your
21 experience, it appears that traffic was relatively light when
22 you got through -- from the airport to Manhattan relatively
23 quickly, right?

24 A. Well, I didn't come from the airport.

25 Q. Where did you come from?

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1 A. I came from Route 3 westbound in Secaucus, New Jersey,
2 which is probably most likely the Shell station.

3 Q. Okay.

4 A. And for that time of day, 410 hours, first, I would need to
5 know what was the day of the week 3/11 was in 2008. Is that a
6 weekend or was that a weekday?

7 Q. It was a weekday.

8 A. All right. If that was a weekday, then most likely traffic
9 is going to build. You know, the usual traffic patterns for
10 this time -- this time of year on that day would probably build
11 no further out than a mile. But I don't have to go in on that
12 road; I utilize local roads, and then the main area in which
13 the congestion is going to take place for that time of day, on
14 a weekday, is when you have all of 495 and all the traffic from
15 Hoboken, and Jersey City, and Weehawken all converging because
16 it's approximately like 18 lanes of traffic going into two. I
17 circumvent all of that, and I go right to the front of the
18 tunnel. That's where it's held.

19 Q. That's right at the tunnel where all that traffic occurs,
20 right?

21 A. Yes, ma'am.

22 Q. And you can see from this form how you came, right? You
23 came on Route 3?

24 A. Yes.

25 Q. So what you're saying is, you go around the traffic that's

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1 lined up in front of the tunnel, right?

2 A. Correct.

3 Q. So it's not that all that traffic is being held, there is a
4 traffic jam usually anyway to get into the tunnel, right?

5 MR. BELL: Objection, your Honor.

6 THE COURT: Thank you.

7 Sustained.

8 BY MS. NECHELES:

9 Q. Well, based on your experience, when you are saying -- when
10 you just testified about all those lanes merging into two
11 lanes, that's what occurs routinely every day, right?

12 A. That is a routine every day.

13 Q. And so when you are escorting someone, you go around all
14 those people, right?

15 A. I do.

16 Q. To the front of the line, right?

17 A. I do.

18 Q. And then that one lane is held up for a little while while
19 you go in, right?

20 A. Both lanes are held.

21 Q. Okay. Both lanes are held for a little while while you go
22 in, right?

23 A. Yeah. It depends what you mean by a little while, but,
24 yes, they're both held.

25 Q. To the best of your recollection, all that occurred here

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1 that day, right?

2 MR. BELL: Objection.

3 Q. To the best of your recollection?

4 THE COURT: Thank you.

5 MR. BELL: Objection. The witness has already
6 testified as to the limits of that.

7 THE COURT: Thank you.

8 Counsel, can you rephrase, please?

9 BY MS. NECHELES:

10 Q. Well, sir, do you recall, when you were interviewed, saying
11 that there was a procedure that was used for escorts through
12 the Lincoln Tunnel, you've been involved in hundreds of
13 escorts, and to the best of your recollection, this was exactly
14 the same as all the hundreds of times that you have done this?

15 MR. BELL: Objection.

16 THE COURT: Thank you.

17 You can answer the question.

18 THE WITNESS: The only thing I can say is there was
19 nothing unusual to report. So if there was something unusual
20 to report, I would have annotated it there, or at least not
21 written that line. If I wrote that line, nothing unusual to
22 report, then nothing stood out to me on this particular escort
23 that was -- that unreasonably happened.

24 Q. When you say you met this person -- you said probably at a
25 Shell station; is that correct?

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1 A. That's where the pickup of the escort would start. The
2 commencement of the escort would start there, but I didn't
3 physically pick up a person.

4 Q. Right, correct.

5 And, sir, am I correct that there was -- the only
6 other authority that did an escort was the NYPD, right?

7 A. Yes. For this escort, yes.

8 Q. So there was no escort up till the time when you met the
9 person?

10 A. I don't understand that question.

11 Q. Well, there was no escort in New Jersey then, right? The
12 only escort was in New York?

13 MR. BELL: Objection, your Honor.

14 THE COURT: Thank you.

15 Can you ask the question differently?

16 MS. NECHELES: Okay.

17 BY MS. NECHELES:

18 Q. Well, looking at your form, when you say all agencies
19 involved, it's only Port Authority police and NYPD, right?

20 A. For this escort, yes.

21 Q. And the Port Authority police was you, right?

22 A. Me and other people that were on the tour, yes.

23 Q. Other people that were on the tour, meaning other people
24 who were -- who assigned this to you?

25 A. Supervisors as well as officers on foot or in other cars

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1 that I needed assistance to help me get where I needed to
2 navigate to.

3 Q. You mean people you were talking to on the radio? Is that
4 what you're referring to?

5 A. Yes, my colleagues.

6 Q. Okay. And the Port Authority police just deal with the
7 tunnel, right?

8 MR. BELL: Objection, your Honor.

9 Q. Well, sir, looking at this report, am I correct that what
10 it indicates is that there was no New Jersey State Police
11 giving an escort here before you picked up?

12 MR. BELL: Objection.

13 THE COURT: Thank you.

14 You can answer the question.

15 THE WITNESS: I don't know if New Jersey State Police
16 had an escort at this day at the tunnel prior to my escort. I
17 can't answer that.

18 BY MS. NECHELES:

19 Q. Okay. But you didn't indicate it on your form, right?
20 That's what I'm asking you.

21 A. Why would I? It had nothing to do with my escort.

22 Q. Okay. Well, you indicate -- when it says "All agencies
23 involved," you indicated NYPD and you, right?

24 A. Because those are the two agencies that were present for my
25 escort. But you asked me if there was another escort that took

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DeMartino - Redirect

1 place with the New Jersey State Police on this day.

2 Q. Up to meet you.

3 A. Oh, for this particular escort?

4 Q. Exactly.

5 A. No. The New Jersey State Police was not involved in this
6 escort.

7 Q. So there was no escort bringing whoever you picked up to
8 you in New Jersey, right?

9 A. No, there was nobody, according to this sheet, that took
10 the escort to me.

11 MS. NECHELES: Thank you. I have no further
12 questions.

13 THE COURT: Thank you.

14 Counsel for Mr. Grant?

15 MR. MERINGOLO: No questions.

16 THE COURT: Thank you.

17 Counsel for the United States?

18 MR. BELL: Briefly.

19 THE COURT: Please proceed.

20 REDIRECT EXAMINATION

21 BY MR. BELL:

22 Q. Lieutenant, you were asked a couple of questions concerning
23 how you would get from the Shell station to the area heading
24 into the Lincoln Tunnel on days when there might be more
25 traffic.

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1 In addition to radioing and effecting the traffic in
2 that way, do you, within your car, have ways of moving traffic?

3 A. I do.

4 Q. What are those?

5 A. I have the ability to use my lights and sirens. I have
6 directionals that come up on the rear side of the car. I also
7 could use my air horn. And I am able to use verbal commands,
8 and sometimes I can use physical commands with people with my
9 hand, depending on how close they are.

10 Q. Would using any of those means of expediting traffic have
11 been unusual, such that it would have gotten in the way of your
12 writing nothing unusual to report?

13 A. No.

14 Q. Finally, you mentioned that the Shell station by Route 3
15 was usually your pickup spot for these escorts. Was that true
16 of both -- well, in what state would you usually meet the
17 escorted vehicles when you came to the Shell stop?

18 A. In what state?

19 Q. Not what state like New Jersey. Where would they usually
20 be? What would they be doing, the escorted vehicle?

21 A. Well, remembering that every escort is different, what the
22 usual occurrence is is that someone is traveling -- if the
23 escort is coming from Route 3, which is the Shell station, that
24 means the escort is usually coming from West Jersey or North
25 Jersey and usually from Teterboro Airport. If the escort is

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1 coming from that location, we usually wait for it at the Shell
2 station in the shoulder on the south side of Route 3, and when
3 I see the escort coming from my rearview mirror or my side
4 mirror, what will happen is they come over the bridge by Giants
5 Stadium, which is the Meadowlands bridge, it's over the
6 Hackensack River, and they will usually flash their lights or
7 have some type of emergency lights in their vehicle. If they
8 flip them on and off, then I usually know that that's my cue to
9 start heading out, and I will meet that escort, or those
10 vehicles, or one vehicle in the left-hand lane, and when they
11 catch up to me -- and I'll go slow, and when they catch up to
12 me, then I'll pick up the escort at that particular point and
13 commence into New York City.

14 Q. And you don't have any indication from this form of whether
15 that procedure was what took place on this day or not, do you?

16 A. No, I don't. But if I picked it up at Route 3 westbound, I
17 would say 90 percent of the time, that's what happens.

18 MR. BELL: Thank you. I have nothing further.

19 THE COURT: Thank you.

20 Counsel for Mr. Reichberg?

21 MS. NECHELES: No, nothing further.

22 MR. MERINGOLO: Nothing.

23 THE COURT: Good. Thank you very much.

24 Lieutenant DeMartino, thank you very much for your
25 testimony. You can step down.

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1 THE WITNESS: Yes, sir.

2 (Witness excused)

3 THE COURT: Counsel for the United States.

4 MR. BELL: Your Honor, at this time, we have some
5 additional recordings to play.

6 THE COURT: Thank you.

7 You can proceed.

8 MR. BELL: Mr. Hamilton, can we take 917 down, please.

9 At this time, with the Court's permission, I ask the
10 jury to take up, once again, their black binders. I would
11 direct their attention to -- why don't we do this this way and
12 just offer a couple of calls first, and we'll do this a step or
13 two at a time.

14 Your Honor, the government offers Government Exhibits
15 W-1712 and 1836, I believe without objection.

16 THE COURT: Thank you.

17 Counsel?

18 MR. MERINGOLO: No objection.

19 MS. NECHELES: No objection.

20 THE COURT: I'm accepting W-1712 and 1836 into
21 evidence.

22 (Government's Exhibits W-1712 and 1836 received in
23 evidence)

24 MR. BELL: With that, we'd like to direct the members
25 of the jury to GX W-01712-T. That corresponds to GX W-01712,

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1 just admitted. It is a January 23rd, 2015, call beginning at
2 3:03 p.m. between Jeremy Reichberg, Mendy Chudaitov,
3 C-h-u-d-a-i-t-o-v, and an unidentified female designated within
4 the transcript as UF. And we'd like to go ahead and play that
5 with the Court's permission.

6 THE COURT: Thank you.

7 Please do.

8 MR. BELL: Mr. Hamilton, please.

9 (Audio playback)

10 MR. BELL: I'm sorry, can you pause that for one
11 moment, Mr. Hamilton. I want to make sure we're all here.

12 Your Honor, can I assist the jurors finding --

13 THE COURT: Thank you. Mr. Daniels will.

14 1712-T.

15 MR. BELL: Thank you very much.

16 THE COURT: Thank you.

17 Counsel, you can proceed.

18 MR. BELL: Can we start again, your Honor?

19 THE COURT: Please do.

20 (Audio playback)

21 MR. BELL: Thank you, your Honor.

22 Now, with the Court's permission, we'll have
23 Mr. Hamilton play W-01836. 1836 is a January 25, 2015, call
24 commencing at 5:53 p.m. between Mr. Reichberg and
25 Mr. Chudaitov.

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1 Mr. Hamilton, please go ahead.

2 (Audio playback)

3 MR. BELL: Thank you, your Honor.

4 The government offers Government Exhibits W-02004 and
5 W-02444 pursuant to the same stipulation before.

6 THE COURT: Thank you.

7 Counsel for Defendant Reichberg?

8 MS. NECHELES: No objection.

9 THE COURT: Counsel for Defendant Grant?

10 MR. MERINGOLO: No objection.

11 THE COURT: Thank you.

12 I'm accepting into evidence Government Exhibits
13 W-02004 and W-02444 into evidence.

14 (Government's Exhibits W-02004 and W-02444 received in
15 evidence)

16 MR. BELL: I'd like to, with the Court's permission,
17 direct the jury's attention two tabs over, to W-02004-T, which
18 correlates with W-02004, which was just admitted. It's a
19 January 26, 2015 call commencing at 3:35 p.m. between
20 Mr. Reichberg and Mr. Grant.

21 Assuming that everybody's there, I'd like to have
22 Mr. Hamilton play that with the Court's permission.

23 THE COURT: Thank you. Please proceed.

24 (Audio playback)

25 (Continued on next page)

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1 MR. BELL: So with the Court's permission, I would
2 like to direct the jury three tabs down to 2444. It
3 corresponds to -- well, 2444 is a January 28, 2015 conversation
4 beginning at 6:02 p.m. between the defendants Mr. Reichberg and
5 Mr. Grant. And with the Court's permission, when we can be
6 sure the members of the jury have all found the transcript, I
7 would like to have Mr. Hamilton play that.

8 THE COURT: Thank you. You can proceed.

9 MR. BELL: Mr. Hamilton.

10 (Audio recording played)

11 MR. BELL: Your Honor, the government offers
12 Government Exhibits W02746 and 2750 pursuant to the earlier
13 referenced stipulation.

14 THE COURT: Thank you. Counsel?

15 MS. NECHELES: No objection.

16 THE COURT: Counsel?

17 MR. MERINGOLO: No objection.

18 THE COURT: Thank you. I'm accepting W02746 and
19 W02750 into evidence.

20 (Government's Exhibits W02746 and W02750 received in
21 evidence)

22 MR. BELL: Your Honor, with your permission, I would
23 like to direct the jury's attention to the next tab, W02746T,
24 which corresponds to 2746, just admitted, it's a January 30
25 call, 2015, which begins at 9:42 a.m. between the defendants,

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1 Mr. Grant and Mr. Reichberg, and I would like to ask
2 Mr. Hamilton to play that.

3 (Audio recording played)

4 MR. BELL: Your Honor, with the Court's permission, I
5 would like to direct the members of the jury to the next tab,
6 W02750T that corresponds with government's W02750, which was
7 just admitted, it's a January 30, 2015 call beginning at
8 9:49 a.m. between the defendants.

9 With the Court's permission, we would like to publish
10 that now. Thank you, Mr. Hamilton.

11 (Audio recording played)

12 MR. BELL: The government now offers Government
13 Exhibit W03156 pursuant to same stipulation mentioned.

14 THE COURT: Thank you. Counsel for defendant
15 Reichberg?

16 MS. NECHELES: No objection, your Honor.

17 MR. MERINGOLO: No objection.

18 THE COURT: Thank you. I'm accepting Exhibit W03156
19 into evidence.

20 (Government's Exhibit W03156 received in evidence).

21 MR. BELL: With the Court's permission, I would like
22 to direct the jury's attention to 3156T, which corresponds to
23 3156, just admitted. It's a February 3rd, 2015 call beginning
24 at 1:33 p.m. It is between Jeremy Reichberg and Boaz Gazit.

25 And Mr. Hamilton, could you go ahead and play that,

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1 please.

2 (Audio recording played)

3 MR. BELL: Your Honor, the government offers
4 Government Exhibits W05012 and W05585 pursuant to the same
5 stipulation mentioned previously.

6 THE COURT: Thank you. Counsel?

7 MS. NECHELES: No objection.

8 MR. MERINGOLO: No objection.

9 THE COURT: Thank you. I'm accepting Exhibit W05012
10 and W05585 into evidence.

11 (Government's Exhibits W05012 and W05585 received in
12 evidence)

13 THE COURT: You can proceed.

14 MR. BELL: Your Honor, I would like to direct the jury
15 to tab W05012T. 5012 is a March 2nd, 2015 telephone
16 conversation, 11:19 a.m. when it begins, and it's between
17 Jeremy Reichberg and Michael "Mike" Milici at 917-968-7933.

18 Looks like everybody found it. With the Court's
19 permission, I would like to have Mr. Hamilton play it.

20 You can go ahead, sir.

21 (Audio recording played)

22 MR. BELL: At this point, your Honor, with the Court's
23 permission, I would like to direct members of the jury to tab
24 GXW05585T, 5585. That correspond to Government Exhibit W05585,
25 which was just admitted, it is a March 4, 2015 call beginning

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1 at 5:36 p.m. between Mr. Reichberg and Michael "Mike" Milici at
2 646-208-3534. And assuming that everybody has found tab 5585T,
3 I would like to have Mr. Hamilton play that call.

4 Go ahead, sir.

5 (Audio recording played)

6 MR. BELL: Your Honor, could we confer with counsel
7 very briefly?

8 THE COURT: Please do.

9 (Pause)

10 MR. BELL: Your Honor, at this time the government
11 would offer Government Exhibit W01813.

12 THE COURT: Thank you. Counsel, do you have a sense
13 of how long this tape is? I would like to find a natural
14 breaking point.

15 MR. BELL: I think after this call would be a natural
16 breaking point, and I don't think it's very long.

17 THE COURT: Good. Counsel for Mr. Reichberg?

18 MS. NECHELES: No objection, your Honor.

19 THE COURT: Thank you.

20 MR. MERINGOLO: No objection.

21 THE COURT: Thank you. I'm accepting W01813.

22 (Government's Exhibit 1813 received in evidence)

23 THE COURT: You can proceed.

24 MR. BELL: So W01813T is the appropriate transcript,
25 it's a January 25th, 2015 call beginning at 4:34 p.m. The

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1 listed participants are Mr. Reichberg and a police officer
2 James, last name unknown, at 718-222-7330.

3 And with the Court's permission, once everybody is at
4 the transcript, I would like to go ahead and play that call.

5 THE COURT: Thank you. You can proceed.

6 MR. BELL: Mr. Hamilton.

7 (Audio recording played).

8 MR. BELL: Your Honor, this represents a logical
9 stopping point.

10 THE COURT: Good. Thank you very much.

11 Ladies and gentlemen, we'll take our break for the
12 day. During this overnight break, please don't discuss the
13 case amongst yourselves, don't communicate about it with anyone
14 else, and don't do any research about the case or anything
15 involved in it. If you see anything in the press, please avoid
16 it. With that, I will see you tomorrow morning. Please be
17 here at 9:00.

18 (Jury not present)

19 THE COURT: Counsel, and ladies and gentlemen, you can
20 be seated.

21 So first, thank you, counsel, for your work today. We
22 did I think pretty well, with the outside example of the one
23 document that took up some time outside of the presence of the
24 jury. To the extent that we can surface those issues early in
25 the day or during breaks, it's appreciated by me and makes the

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1 process more seamless for the Court and for the jury. But I
2 think otherwise we were much more efficient than we have been
3 or prior days, so thank you for your work to prepare for today
4 in that regard.

5 Counsel for the United States, let me ask you, do you
6 have any additional information about the file that was the
7 subject of the outreach by an anonymous benefactor to the
8 defendants or can you provide me with an update on that, or is
9 that something that we should take up subsequently?

10 MS. RAVENER: Give us one moment?

11 THE COURT: Please.

12 (Pause)

13 MS. RAVENER: Your Honor, a couple of responses.
14 First of all, so the record is clear, we did provide the
15 defendants with files that were located in Mr. Villanueva's
16 locker. Separately, this is not one of those files, according
17 to our records.

18 This file, based on its markings, we believe appears
19 to have been produced as confidential discovery in a separate
20 case against Paul Dean, Robert Espinel and Gaetano Valastro.
21 And so based on the markings, we understand that it appears to
22 have come from a confidential discovery production made to
23 those defendants in their case.

24 THE COURT: Thank you. Just to complete the circle,
25 confidential discovery production by the United States, is that

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1 right?

2 MS. RAVENER: Correct, your Honor, in a case pending
3 before Judge Ramos pursuant to a protective order put in place
4 by Judge Ramos.

5 THE COURT: Thank you. So counsel for the defendants,
6 I would like to hear your views on this.

7 MR. MERINGOLO: Judge, that's very concerning.

8 THE COURT: Please.

9 MR. MERINGOLO: It's a related case. Paul Dean has
10 been testified about. Mr. Villanueva was in his office.
11 Mr. Ochetal was in his office. This is Brady, exculpatory
12 material, 3500 material. It's in the government's office. I
13 don't know if any of these prosecutors were on that case, but
14 if they're going to prepare to bring a licensing division --
15 two people from licensing to testify against Mr. Grant and
16 Mr. Reichberg, we should have been provided this discovery.

17 THE COURT: Thank you. I don't know to what extent
18 this would properly constitute 3500 materials. At the same
19 time, I understand the defendant's question regarding whether
20 and to what extent these might be exculpatory materials. I
21 don't have a comprehensive view on that question at this point.
22 It's one on which I will solicit the views of the parties.

23 Counsel for Mr. Reichberg, what's your view?

24 MS. NECHELES: Your Honor, typically there's another
25 piece of paper that goes with these files which shows who

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1 prepared the -- who was the intake officer. So the question is
2 where is that paper, does that paper exist, and was Mr. Richard
3 Ochetal the person who prepared this?

4 Because if he was, then clearly we should have gotten
5 it and we should have been able to cross-examine, because this
6 is the very day that Mr. Reichberg's fingerprints are taken,
7 and Mr. Ochetal was taking someone else's fingerprints that
8 same day and they come back in two days. And there's all this
9 testimony that he's expediting Mr. Reichberg's and it doesn't
10 come back for a month, well, I think that that would have been
11 relevant information.

12 If their witness was the person who was handling this
13 file and is coming in to testify about files that he's working
14 on and things that's doing wrong, and they're the one bringing
15 in all the Giglio stuff about all the bribes and things that
16 he's doing things improper on, I would have thought that we
17 should have gotten that as part of the discovery or part of the
18 Brady. It's the files that their witness was handling -- at
19 least the ones that he's handling at the same time he's
20 expediting the fingerprints. So I would ask that the
21 government look at and let us know about if they have that
22 other piece of paper.

23 THE COURT: Thank you.

24 Counsel for the United States?

25 MS. NECHELES: And I believe Ms. Ravener was the

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1 prosecutor on that case.

2 MS. RAVENER: Let me address that briefly, your Honor.

3 THE COURT: Please.

4 MS. RAVENER: I did not bring the charges in the Dean
5 and Espinel case. I have inherited the matter since then and
6 have been managing it in coordination with my colleagues for
7 the past couple of months. I did not handle any discovery.
8 I'm not familiar with the discovery independent of our review
9 right now.

10 To the point that's raised here, I don't see any basis
11 for defense counsel's position with respect to this record. We
12 are willing to take a look and see if there's any other related
13 records around this in the manner it was produced, but standing
14 here today, I have no such information, as requested by defense
15 counsel, about this document.

16 And to be clear, the notation on it refers to a
17 different license division officer, it has the name Barbario on
18 it, and that is the name of another member of the license
19 division who was working there at the time who was not
20 Mr. Ochetal and Mr. Villanueva.

21 Your Honor, if I could briefly address the relevance
22 of this alleged document.

23 THE COURT: Please do. Actually let me pause you,
24 because I do need to end today's hearing more or less on time.
25 Unfortunately I have a sentencing coming up shortly.

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I think it would be valuable for the United States to respond to the basic inquiry that Ms. Necheles just posed, namely to extent there's some associated document that will identify the author of or the participant in the preparation of this record, it would be helpful. I'm not taking the position at this point on whether or not this record is relevant or constitutes Brady material. To extent that the parties seek to present arguments to the Court on that issue, you have the opportunity to do that.

I will simply observe that someone out there thought that this record was pertinent to this case, and therefore reached out to Mr. Meringolo with the record. What that says, I will not conclude at this point, but presumably some person in the world thought this was a valuable document that the defense should have in this case.

So I would appreciate it if the government could take up the inquiry that Ms. Necheles has requested, this is an emergent issue, and having the additional information will be helpful for us to evaluate it, and the extent to which there's actually a problem there.

MR. BELL: Judge, is the inquiry just whether there's another officer listed on that sheet she made reference to or whether it's Mr. Ochetal or someone else involved?

THE COURT: I will expand it to say what my understanding of it is the defense wants to know whether or not

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1 the government's witnesses, Ochetal, potentially also
2 Villanueva, were involved in the preparation or processing of
3 the document that was provided to them by their anonymous
4 whistleblower, using the term extremely broadly.

5 Counsel for Mr. Reichberg, could I ask, is that an
6 adequate summary of the request that you had made?

7 MR. MERINGOLO: One second, your Honor.

8 THE COURT: That's fine. Please take your time.

9 (Pause)

10 MS. NECHELES: I guess, your Honor, the question is --
11 if Mr. Ochetal came in to testify, I would think that we would
12 have gotten the files that he testified about. He comes in and
13 testifies I was doing things with files, I was getting bribed
14 and I was pushing people through. I would have thought we
15 would have had those in discovery, whatever files the
16 government has that he was doing something wrong.

17 And I don't know that we got -- I mean it's appearing
18 to me that I don't know that we got that. Certainly Rule 16
19 should cover something that's material to the defense. If
20 someone is coming in and testifying to something, and the
21 government is eliciting that testimony on their direct about an
22 extensive -- they had extensive testimony about all the
23 bribery, all the wrongdoing, and that he never did X as quickly
24 as he did it in this case. I would have expected if the
25 government has in its possession these files that he was

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1 supposedly doing stuff on that they would have turned it over
2 to me.

3 And I'm kind of realizing now maybe they didn't, and
4 I'm very surprised by that. And I would ask that they be
5 directed to do so now so that we can figure out: Is there
6 stuff there that is problematic? Maybe there isn't, but there
7 might be. I would have thought that I would be able to
8 cross-examine on exactly that.

9 And especially because the government was making such
10 a big deal about how Jeremy Reichberg's was done quicker,
11 Jeremy Reichberg's was only in two months. If they had the
12 other files that supposedly things were done wrong, I should
13 have had them to be able to analyze them and to look at them
14 and compare, and if they had other files from other people in
15 the department. This was a big scheme that they were talking
16 about. I would have thought that certainly that would be
17 material to the defense.

18 THE COURT: Thank you. I can't take a position on
19 this issue at this point. I understand the government has done
20 some basic research regarding the provenance of that document
21 during the course of the trial day, which is appreciated. But
22 I think that the parties and the government need to have the
23 opportunity to consider whether and to what extent that is a
24 document that should have been provided to the defense under
25 16(a)(1)(E) or otherwise. And I can't take a position on that

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1 at this time based on the information that's been presented to
2 me to date.

3 MS. NECHELES: Your Honor, could we ask that the
4 government also -- get an answer from the government on whether
5 there were other files in their possession that were part of
6 this so-called scheme that we were not provided with, and
7 particularly with respect to Mr. Villanueva and Mr. Ochetel who
8 actually testified here today?

9 THE COURT: Thank you. To be clear, my very
10 preliminary understanding of the document at issue here, namely
11 the document that was anonymously provided to Mr. Meringolo, is
12 not necessarily a record reflecting the existence of or the
13 commission of the alleged scheme. Instead, the point that
14 makes it relevant under the defendant's perspective, as I
15 understand it, is the fact that it reflects that the
16 fingerprints were processed more promptly than the government
17 had been suggesting during their line of inquiry. So I don't
18 know at this point that this is a document that is part of or
19 is driven by the alleged bribery scheme.

20 That said, counsel for the United States, can you
21 respond to that inquiry now?

22 MS. RAVENER: Your Honor, we'll look at the records
23 and we'll see if we have any further information we can supply
24 about this particular document.

25 I do want to very --

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1 THE COURT: Let me be clear, Ms. Necheles is asking a
2 broader question at this point. And I appreciate that you're
3 going to look at this particular record. I understand
4 Ms. Necheles' most recent request to be, however, that the
5 United States check and confirm that there aren't additional
6 records related to the alleged bribery scheme in the licensing
7 bureau that were not delivered to the defendants to the extent
8 they were involved in the alleged conspiracy.

9 MS. RAVENER: Your Honor, we'll get back to Court
10 about that. But one moment.

11 Thank you.

12 (Pause)

13 MS. RAVENER: Your Honor, we'll take a look at this
14 matter. I just want to note very briefly that the particular
15 document that was placed before Mr. Ochetal and that is at
16 issue here clearly reflects someone who had multiple other gun
17 licenses issued. And Mr. Ochetal, when questioned about that,
18 said that that would be very different because the prints may
19 come back at a different rate if they're already in the system
20 and have already been requested for further gun licenses. We
21 will look into this matter and report back to the Court, but I
22 want to be clear about what exactly it is that is going on
23 here.

24 THE COURT: Thank you. That's helpful. I will
25 inquire about this more tomorrow morning. I think it's

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1 reasonable to give the government the chance to find out what
2 is happening here before they comment further.

3 MS. NECHELES: I know your Honor is in a hurry and I
4 just want to raise an issue.

5 THE COURT: Please do.

6 MS. NECHELES: Your Honor, I'm very, very troubled in
7 this case by what has happened here in terms of the government
8 so strenuously arguing and really sort of in ways that I think
9 is incorrect in the law that the defense essentially not be
10 able to put in any document, emails, telephone calls, to show
11 that -- under the argument these are statements of a
12 co-conspirator, and basically arguing there is no exception.

13 And the problem is that at the end of the day the jury
14 is going to know that the wiretaps were up for months and that
15 there's all these emails, and they will think that -- they will
16 wonder why did the defense not put in anything. And inevitably
17 they will think because the defense had nothing to say, that we
18 had nothing that was helpful to us on the tapes, and that's
19 wrong, or in the emails.

20 It is not correct that the defense doesn't get to
21 defend itself, that we don't get to go through the tapes and
22 say this is part of the same story and it comes in as our
23 exhibit, this is part of an email that was sent which shows
24 that another email is wrong.

25 And your Honor, I am going to submit some briefing on

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1 this, but I think that what is going on and what has started to
2 happen in this case is really depriving the defendants of a
3 fair trial because the jury is being presented with a picture,
4 including by not allowing me to put things in as my defense
5 exhibits, insisting they go in as government exhibits, really
6 presenting a picture that the defendants have no defense, that
7 nothing on the tapes is good for them, nothing in the emails.
8 That's just not right, your Honor.

9 THE COURT: Thank you. Let me comment.

10 MS. NECHELES: So we would -- I will brief it, but it
11 is not right. What the government keeps saying every time we
12 stand up is the defendants do not have a right to put these in.
13 We have a right to put the tapes in to show their version of
14 the story is not accurate.

15 THE COURT: Thank you. Let me comment on that briefly
16 before we take our recess.

17 And again, I know the lawyers here all know this, but
18 I will just repeat it. I think that the government's arguments
19 rest on Rule 801, which contain a series of exclusions from the
20 hearsay rule, and that rule specifically provides a rule with
21 respect to opposing party's statements.

22 So for better or worse, Congress has endorsed a rule
23 that permits a hearsay exclusion for statements that are
24 offered against an opposing party that satisfy a number of
25 requirements. So the government, I think, is taking the

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1 position that records that they can offer against the
2 defendants are permitted under Rule 801(d)(2) because they are
3 an opposing party's statement. The same provision does not
4 apply to the same party's statement.

5 So that's, I think, the lynchpin of the government's
6 argument. There may be other bases to permit the introduction
7 of documents or exhibits by the defense, but that distinction
8 and how it is that the rules deal with opposing party, as
9 opposed to same party statements, does exist in the rules, as
10 the parties know, and it does constraint how the Court views
11 evidence that is presented.

12 To the extent that there are other bases for the
13 introduction of documents which might otherwise constitute
14 hearsay, I invite clear briefing on it, and ideally in as
15 specific a manner as possible addressed to the particular
16 document so that I can evaluate it in a timely fashion, ideally
17 outside the presence of the jury.

18 I'm happy to evaluate alternative methods, but I do
19 want to make sure that all of the people here are aware of
20 bifurcation and how it is that the rules treat this hearsay
21 exclusion.

22 MS. NECHELES: Your Honor, if I could be clear on
23 that, that is an exception to hearsay which allows for certain
24 evidence to come in. It does not prohibit -- it's not a
25 prohibition. It allows some things, but it does not prohibit

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1 conduct to come in just because it is called a statement or an
2 email.

3 THE COURT: Thank you, counsel. I don't think anybody
4 disagrees with you, but the only point that I request is that,
5 to the extent that there is a statement that would otherwise be
6 hearsay, that the defense be prepared to, and that you do,
7 present to me the basis for its introduction, either as an
8 exception from the hearsay rule or otherwise, to explain why
9 it's non-hearsay.

10 MS. NECHELES: I understand what you're saying. I do
11 note that Rule 47 permits oral motions at trial, because I
12 could not possibly brief every exhibit. And particularly when
13 you get something like this which occurs where you have a
14 witness and it is sort of surprising that someone would be
15 making this objection. We stipulated to what it is, the
16 foundation for it, it's a document the government intends to
17 introduce.

18 This was a very surprising move by the government that
19 they should get up and argue so vociferously that the defense
20 cannot put in something that is not really a statement, it's an
21 email that's being sent forwarding another email, and which the
22 government keeps saying they will introduce anyway.

23 I submit, your Honor, the government is trying through
24 every way to shut down the defense, and they are succeeding at
25 it. We are not able to present our defense and to show -- they

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1 are preventing us from putting in transcripts as defense
2 exhibits, they are preventing us from putting in emails that
3 really don't say anything, they are just forwarding something,
4 as some sort of argument that this is a statement of not a
5 co-conspirator.

6 Your Honor, we are being -- this kind of thing will
7 prevent these defendants from getting the kind of defense that
8 they are entitled to. If the truth is that this was forwarded
9 to somebody, the truth is that that is what happened, it can't
10 possibly be right under the rules that the defense can't show
11 the truth to the jury.

12 This is not a case where we're trying to pervert --

13 THE COURT: I'm sorry, Ms. Necheles, please feel free
14 to take this up with someone else. You're not persuading me at
15 this point. I am very happy to -- because if you're addressing
16 the Court, I think you have a sense of what works with me, if
17 you're speaking to the gallery, please take it up with the
18 gallery.

19 MS. NECHELES: Your Honor, I'm not.

20 THE COURT: Counsel, to the extent that there's an
21 issue that you would like to bring to my attention, please do.
22 As you can see, I will take up every issue that you want to
23 bring to me. I'm saying that it's important that you raise it
24 with me so I could make a proper decision and that is in
25 accordance with the rules.

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1 MS. NECHELES: Right, your Honor. All I'm saying is I
2 can't brief every exhibit here. It's just not possible. So
3 I'm doing the best I can, but I do feel that at this point that
4 I'm concerned about the government really preventing the
5 defense from showing things to the jury that are part of what
6 went on.

7 MR. BELL: Very briefly, your Honor.

8 THE COURT: Please.

9 MR. BELL: One thing that we have done in our
10 communications with the defense when we have -- as we have done
11 consistently, given a couple days notice of witnesses, is give
12 them, too, some sense of our exhibits; maybe not chapter and
13 verse and exhibit number, but some sense of what they can
14 expect coming in.

15 And we asked somewhat consistently for the defense to
16 let us know, to extent that they can, if they foresee issues
17 like the one that came up today, so that if we spot an issue we
18 can raise that issue. And that way the burden of fronting all
19 these things is not entirely on the defense. The defense has
20 not taken us up on that invitation at any point that I could
21 think of so far in the trial. But I will note that if they do,
22 the opportunity is that we can raise these issues as well, as
23 we would have done with what was raised today.

24 I will note further to that -- then I have one more
25 housekeeping question to raise with respect to tomorrow -- that

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1 just with respect to I think the record that Ms. Necheles is
2 attempting to create here, the defense has vigorously
3 cross-examined each of our witnesses to this point, we expect
4 that they will do more. They have the opportunity to put on a
5 case. I expect that the cross-examination of Mr. Rechnitz,
6 thoroughness-wise if not length-wise, will be one for the
7 books, and we welcome that. The defense has had every
8 opportunity to brief these issues, as have we. The defense has
9 had I think a lot of leeway in asking for sidebars and raising
10 issues that should have been raised before.

11 For our part, your Honor, this is not some sort of
12 coordinated campaign for us to prevent the defense from making
13 their case. We're just trying to, A, make ours, since it is
14 our turn to do so, and B, hold everybody to the same limits of
15 the Federal Rules of Evidence.

16 I think that your Honor is right in suggesting that,
17 to some degree, the defense right now is attempting to play to
18 some combination of the media and the Court of Appeals. We
19 appreciate your Honor's laser-like focus on the actual issues
20 here.

21 With respect to tomorrow, we noted that we expect to
22 call Mr. Rechnitz tomorrow along with one other relatively
23 short witness who should come earlier in the day. It would
24 help us -- we also recognize that it's the day before our
25 trial's Thanksgiving break. Is it your Honor's intention to go

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1 right until 3:30? Because that will help us to plan what we
2 hope to accomplish for the witness.

3 To be clear, your Honor, we would prefer to do exactly
4 that, in line with what our standard practice has been, but we
5 recognize that it is a holiday.

6 THE COURT: Thank you. My expectation is that we will
7 go at least up until -- or I should say go up until at least
8 3:00 p.m., and I expect to go as long as 3:30, as late as 3:30.
9 I have a number of conferences later in the afternoon, as I do
10 here, and I'm working with conferences the following day. So
11 my hope is that we will be able to get as much work done
12 tomorrow as possible.

13 MR. BELL: Great, your Honor. We will note on the
14 record now that we haven't gotten -- we put the defense on
15 notice of the timing of Mr. Rechnitz's testimony some days even
16 before the two-day window. We have not yet been made aware of
17 any issues that were worth flagging ahead of time in order to
18 save time. To the extent those come, we'll address them
19 expeditiously at night, and hopefully we'll have a productive
20 day tomorrow in the same way that we did today.

21 MS. NECHELES: Your Honor, to be clear, I don't know
22 what Mr. Rechnitz is going to testify about. I have no idea.
23 He testified extensively. I have notebooks. He has given
24 statements for over 70 interviews. I don't know what he will
25 testify to, so I cannot raise issues that I don't know about.

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1 The government has not flagged for me anything that they think
2 might cause concern.

3 In addition, I cannot outline my crosses for the
4 government before they happen, because if I do then they
5 preempt and they coach the witness to testify in a different
6 way, and that would be depriving my client of his Sixth
7 Amendment rights to confront witnesses if I have to tell the
8 government what my cross is going to be.

9 And third, when the government says this is their time
10 to put on evidence, that's wrong. That's totally wrong. It is
11 their direct case but we get to cross-examine and put in
12 evidence through our cross-examination. The government doesn't
13 own the witnesses, they don't own the evidence, we get to cross
14 on this at this point.

15 So it's just not true when the government keeps saying
16 it's their turn to do it. It's not right. That's not how a
17 criminal trial goes. And usually, as Mr. Bell is aware, the
18 defense doesn't even call witnesses in most cases. You put in
19 all your evidence through the government's case. It would be
20 ridiculous if I had to call back each of these witnesses. It
21 would double the time of the trial. That never happens in a
22 criminal case, your Honor.

23 THE COURT: Good. Thank you.

24 Anything else before we take our recess for the day?

25 MR. MERINGOLO: No, Judge.

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1 THE COURT: I will read the rest of my decision on the
2 expert issue tomorrow.

3 There's a question with respect to the scope of the
4 limiting instruction that I provide regarding Mr. Rechnitz's
5 testimony. I have a proposed version of that limiting
6 instruction that I will bring to our conference tomorrow
7 morning. We may circulate it overnight if it would be helpful.

8 MR. BELL: Could you clarify what you mean by that?
9 We're not sure.

10 THE COURT: This is the other acts instruction.

11 MR. BELL: Yes. Understood, your Honor. Thank you.

12 We have nothing further. We appreciate the Court's
13 time.

14 THE COURT: That's fine. Good. Thank you all.

15 (Adjourned to November 20, 2018 at 9:00 a.m.)

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1 GOVERNMENT EXHIBITS

2	Exhibit No.	Received
3	911 through 914 and 1225	2155
4	923	2208
5	917	2219
6	W-1712 and 1836	2252
7	W-02004 and W-02444	2254
8	W02746 and W02750	2255
9	W03156	2256
10	W05012 and W05585	2257
11	1813	2258

12 DEFENDANT EXHIBITS

13	Exhibit No.	Received
14	JR9463	2198